

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF OHIO  
3 WESTERN DIVISION

4 UNITED STATES OF AMERICA, - Docket No. 3:10-cr-522  
5 Plaintiff, - Toledo, Ohio  
6 v. - September 7, 2011  
7 ALEX DAVID COOK, - Trial  
8 Defendant. -  
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9  
10 VOLUME 3  
11 TRANSCRIPT OF TRIAL  
12 BEFORE THE HONORABLE JAMES G. CARR  
13 UNITED STATES DISTRICT JUDGE, AND A JURY

14 APPEARANCES:

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Proceedings recorded by mechanical stenography,  
transcript produced by notereading.

1 (Reconvened at 1:38 p.m.)

2 (Jury enters the courtroom.)

00:00:01 3 THE COURT: Ms. Kelley, who is your witness,  
00:00:03 4 and what are we likely to hear?

00:00:04 5 Ms. Kelley, who is your witness?

00:00:12 6 MS. KELLEY: I'm sorry. I just heard  
00:00:14 7 witness, and I went and got him.

00:00:16 8 We are calling Dr. Wayne Graves to the  
00:00:18 9 stand. And he is expected to testify as to whether  
00:00:24 10 someone like Alex with his reading disability would  
00:00:28 11 knowingly sign a statement without understanding it or  
00:00:33 12 having adequate time to examine it.

00:00:38 13 THE COURT: Sir, you may come forward.

00:00:56 14 (The witness was sworn by the clerk.)

00:01:10 15 THE COURT: Will you tell the ladies and  
00:01:12 16 gentlemen your name, please.

00:01:14 17 THE WITNESS: My name is Wayne Graves, Ph.D.

00:01:20 18 THE COURT: What is your community of  
00:01:21 19 residence?

00:01:22 20 THE WITNESS: I live in Swanton, Ohio.

00:01:24 21 THE COURT: Okay. And what is your  
00:01:26 22 occupation or profession?

00:01:27 23 THE WITNESS: I'm a clinical and forensic  
00:01:29 24 psychologist.

00:01:30 25 THE COURT: And what does that mean?

00:01:33 1 THE WITNESS: Well, I'm a psychologist who  
00:01:35 2 spends about half my time working with clinical problems  
00:01:40 3 in people, and the other half working with clinical  
00:01:45 4 problems as they apply to some legal question, something  
00:01:50 5 to deal with a question before the courts or something  
00:01:55 6 that has legal aspects to it.

00:01:58 7 THE COURT: And how long have you been doing  
00:02:02 8 that sort of work?

00:02:04 9 THE WITNESS: Thirty-three years.

00:02:06 10 THE COURT: And what was your training and  
00:02:11 11 education and certifications and so forth?

00:02:14 12 THE WITNESS: I received a bachelor with  
00:02:18 13 honors in psychology from Indiana University, Ph.D. in  
00:02:22 14 clinical psychology in 1976 from the University of  
00:02:27 15 Toledo. I did an internship in -- on the east coast in  
00:02:31 16 Baltimore at Shepherd Pratt and Springfield Hospital  
00:02:35 17 Center. And I did a residency and my early training at  
00:02:39 18 Court Diagnostic and Treatment Center, which is the  
00:02:42 19 local forensic psychiatry center. I ran that agency  
00:02:47 20 until 1982. And I've been in private practice since  
00:02:54 21 then.

00:02:54 22 THE COURT: And I apologize, but I -- if I  
00:03:00 23 can get my computer to cooperate, will you tell me your  
00:03:03 24 name again.

00:03:04 25 THE WITNESS: Wayne Graves, G-r-a-v-e-s.

00:03:11 1 THE COURT: Ms. Kelley.

00:03:12 2 MS. KELLEY: Thank you. Based on what Dr.  
00:03:14 3 Graves just told us, I would ask that he be qualified as  
00:03:17 4 an expert.

00:03:18 5 THE COURT: Any objection to his giving his  
00:03:21 6 opinion?

00:03:21 7 MR. CRAWFORD: No, Your Honor.

00:03:21 8 THE COURT: Okay. Ladies and gentlemen, let  
00:03:25 9 me say, Ms. Kelley -- it's a personal idiosyncrasy, but  
00:03:32 10 we lawyers commonly refer to a witness who has some  
00:03:35 11 special skill or training, education, or experience as,  
00:03:38 12 quote, an expert. And with that label, the law entitles  
00:03:44 13 them -- and actually it's with those qualifications,  
00:03:48 14 skill, and training -- label to one side -- the law  
00:03:51 15 entitles them to give opinions on various subject  
00:03:54 16 matters within their field of education, training, and  
00:03:59 17 experience. So he's being called for that purpose.

00:04:03 18 Okay. Go ahead.

00:03:22 19 - - -

00:03:22 20 WAYNE GRAVES, Ph.D., DIRECT EXAMINATION

00:04:04 21 BY MS. KELLEY:

00:04:04 22 Q. Good afternoon, Doctor.

00:04:06 23 A. Good afternoon.

00:04:08 24 Q. Do you know the defendant in this case, Alex  
00:04:10 25 Cook?

00:04:10 1 A. I do.

00:04:11 2 Q. And please tell the jury how you know him.

00:04:13 3 A. I performed an evaluation of Mr. Cook. And I did  
00:04:18 4 it for his -- for what was his public defender in June  
00:04:26 5 of this year. I met him on two -- well, May of this  
00:04:31 6 year. I met him on two occasions.

00:04:33 7 Q. You met him on two occasions. And how long did  
00:04:36 8 you meet with him on both occasions?

00:04:38 9 A. I had two hours of face-to-face time, plus I had  
00:04:43 10 him in the office another two or three hours doing other  
00:04:49 11 testing kinds of endeavors.

00:04:54 12 Q. And tell the jury about the testing that you  
00:04:56 13 performed.

00:04:57 14 A. First I tested his ability to read and spell and  
00:05:04 15 tested his mathematical calculation skills. Then I  
00:05:08 16 asked him to do two personality inventories, which were  
00:05:13 17 computer -- one of them is computer administered, the  
00:05:16 18 other one was paper and pencil administered because of  
00:05:21 19 some issues that I don't remember now, but it was later  
00:05:25 20 put into the computer.

00:05:27 21 Q. Excuse me. Was it an issue with the computer or  
00:05:30 22 was it an issue with Alex?

00:05:33 23 A. I believe that it was an issue with our computer  
00:05:36 24 timing rather than with Alex.

00:05:42 25 These two instruments are pretty commonly used

00:05:45 1 personality inventories, one of them about current  
00:05:48 2 issues and one about longer term personality problems or  
00:05:53 3 types. One of them is called the MMPI, Minnesota  
00:06:01 4 Multiphasic Personality Inventory. The other one is  
00:06:05 5 called the Milan Personality Inventory III.

00:06:12 6 Q. And did you perform any other types of tests?

00:06:14 7 A. I asked him to complete the adult -- I'm sorry,  
00:06:20 8 the psychosexual life history adult male form, which was  
00:06:24 9 a take-home eight-page questionnaire that he brought  
00:06:28 10 back with him the next time.

00:06:30 11 Q. All right. And did you review any documents  
00:06:37 12 either in preparation for the interviews or for writing  
00:06:42 13 your final report?

00:06:44 14 A. I had available at the time that I did the  
00:06:47 15 evaluation his educational records.

00:06:50 16 Q. All right.

00:06:50 17 A. And the records of his -- I'm going to refer to  
00:06:57 18 my report.

00:06:57 19 Q. Before you do that, Doctor --

00:07:00 20 A. I did have available records from the offense  
00:07:06 21 itself including the statement that he had signed, the  
00:07:11 22 descriptions of the websites that he was to have gone  
00:07:15 23 to, the indictment, the description of the offenses.

00:07:21 24 Q. And when you said earlier that you reviewed  
00:07:24 25 educational records, what specifically do you mean?

00:07:27 1 A. Alex was in special education for his entire  
00:07:35 2 grade school and high school career. He had testing  
00:07:40 3 called individualized education plans, IEPs, and some  
00:07:47 4 specific additional testing that was multifactored  
00:07:51 5 evaluations called -- that were available to me. There  
00:07:55 6 were two IEPs and one section of the multifactored  
00:07:59 7 evaluation.

00:08:01 8 Q. Now, a few moments ago, Doctor, you touched what  
00:08:04 9 you called your report. I'm handing you what's  
00:08:06 10 previously been marked as Defendant's Exhibit 101.  
00:08:11 11 Could you please tell the jury what that is.

00:08:18 12 A. This is a marked up copy of an early edition of  
00:08:37 13 my report. It does not have my letterhead; it does not  
00:08:43 14 have headers on it.

00:08:47 15 Q. But it is your report?

00:08:53 16 A. I haven't examined it entirely. It's not signed.  
00:08:57 17 It looks like it's very close to the final product.

00:09:11 18 MS. KELLEY: I apologize, Your Honor.

00:09:19 19 Your Honor, could I retrieve that copy of  
00:09:22 20 the report?

00:09:23 21 THE COURT: Of course.

00:09:40 22 MR. CRAWFORD: Could we approach the side for  
00:09:42 23 a second?

00:09:43 24 THE COURT: Of course.

00:09:44 25 (Whereupon the following discussion was had

00:11:33 1 at the bench outside the hearing of the jury:)

00:11:33 2 MR. CRAWFORD: Judge, we've seen one copy of  
00:11:33 3 a report; no previous drafts, no marked up drafts. I  
00:11:33 4 have no idea --

00:11:33 5 MS. KELLEY: This is the report that I was  
00:11:33 6 given. And his office, because I had a marked up copy,  
00:11:33 7 I contacted his office and I said, please send me a  
00:11:34 8 clean final copy, which he did. And that, in turn, was  
00:11:34 9 e-mailed to you and a copy to the Court.

00:11:34 10 MR. CRAWFORD: Judge, I've seen no prior  
00:11:34 11 drafts that are marked up.

00:11:34 12 MS. KELLEY: I'm not using them. This is my  
00:11:34 13 personal copy. If not, I won't use it. You have the  
00:11:35 14 same copy that he has.

00:11:35 15 MR. SECOR: I thought he said it was marked  
00:11:35 16 up.

00:11:35 17 MS. KELLEY: I would ask for two minutes to  
00:11:35 18 go and download from Amy's computer that document.

00:11:35 19 MR. CRAWFORD: I think it's hearsay anyway.  
00:11:35 20 It can be used for prior inconsistent statements, but to  
00:11:35 21 admit an expert report --

00:11:35 22 THE COURT: Why don't you ask him his  
00:11:35 23 opinions.

00:11:35 24 MS. KELLEY: But it is the same report.  
00:11:35 25 It's computer ignorance on my part.



00:11:35 1 (End of sidebar discussion.)

00:11:42 2 BY MS. KELLEY:

00:11:45 3 Q. Based on the review of the documents and your  
00:11:47 4 interview with Alex, do you have an opinion based on a  
00:11:54 5 reasonable degree of medical certainty as to why Alex  
00:11:59 6 might sign a supposed confession?

00:12:05 7 A. I have an opinion to a reasonable degree of  
00:12:09 8 psychological certainty --

00:12:10 9 Q. All right.

00:12:11 10 A. -- about why Alex might do that, yes.

00:12:14 11 Q. Please tell the jury that opinion.

00:12:15 12 A. Well, it essentially is that because of Alex's  
00:12:19 13 learning disabilities that he lived with his whole life  
00:12:23 14 throughout school, he didn't really trust his own  
00:12:27 15 ability to read and make sense of written information.  
00:12:34 16 He also, because of that, was somewhat dependent on  
00:12:38 17 authority figures and was inclined to give in to people  
00:12:44 18 in authority and would not necessarily trust his own  
00:12:52 19 reading of something that was in front of him.

00:12:55 20 Q. Now, I want to clarify, Doctor, is Alex stupid or  
00:13:02 21 unintelligent?

00:13:03 22 A. Alex has somewhere between low average and  
00:13:06 23 average intellectual functioning, tested at that level.  
00:13:12 24 But he also has learning disabilities in reading,  
00:13:17 25 expressive language, as in written language, and

00:13:20 1 calculation or math skills, and they've been identified  
00:13:25 2 consistently throughout his school career.

00:13:30 3 Q. Does that come from lack of trying or lack of  
00:13:35 4 ability?

00:13:37 5 A. It usually comes from some lack of ability from  
00:13:42 6 some neurologic miswiring that takes place that  
00:13:49 7 interferes with information coming in and being  
00:13:52 8 translated appropriately.

00:13:55 9 Q. And you stated earlier that you gave Alex a  
00:13:58 10 number of tests, correct?

00:13:59 11 A. Yes.

00:14:01 12 Q. Do you think he was applying himself when he was  
00:14:05 13 taking those tests?

00:14:07 14 A. I think he was putting reasonably good effort  
00:14:11 15 into those tests with one exception.

00:14:14 16 Q. All right. And tell the jury about that.

00:14:16 17 A. There was one long computer test. The MMPI II is  
00:14:25 18 567 items. Somewhere in the last 200 of those items  
00:14:31 19 apparently Alex lost focus or interest, and it looks as  
00:14:39 20 if he did not stay on task or answered potentially  
00:14:43 21 random. It's a long test for somebody with a reading  
00:14:48 22 disability.

00:14:48 23 Q. Would it be fair to say that Alex just doesn't do  
00:14:51 24 well on long examinations?

00:14:54 25 A. It would be fair.

00:14:58 1 Q. Now, do you have any indication that maybe Alex  
00:15:03 2 was malingering on your tests?

00:15:07 3 A. Meaning that he was trying to look more  
00:15:10 4 defective?

00:15:12 5 Q. Yes.

00:15:13 6 A. Actually I thought his effort was pretty good. I  
00:15:16 7 thought he wanted to appear competent. I didn't --  
00:15:22 8 there are indicators in the two personality testing  
00:15:27 9 instruments that allow me to decide his approach to the  
00:15:30 10 testing, and both of them were making it look as if he  
00:15:35 11 was making good effort and was not trying to look  
00:15:38 12 particularly dysfunctional.

00:15:42 13 Q. Now you said, as I recall, that you spent  
00:15:45 14 approximately two hours face to face with him.

00:15:48 15 A. Yes.

00:15:48 16 Q. That would be two one-hour sessions?

00:15:50 17 A. Two one-hour sessions on two different days.

00:15:57 18 Q. Did he feel comfortable with you, if you know, or  
00:16:00 19 did he appear comfortable with you?

00:16:03 20 A. He got more comfortable over time. I don't think  
00:16:06 21 Alex feels terribly comfortable with anybody, but he got  
00:16:12 22 more comfortable by the second session.

00:16:16 23 Q. Did you ever feel that Alex was in a position to  
00:16:20 24 confide in you?

00:16:23 25 A. Well, I was asking fairly intimate complicated

00:16:26 1 questions about him and about his family and about his  
00:16:30 2 sex life and about his experiences that are typically  
00:16:35 3 not easy to talk about, and he was relatively open.

00:16:39 4 Q. Did he talk to you about being molested as an  
00:16:44 5 11-year-old?

00:16:46 6 A. I don't think so.

00:16:48 7 Q. All right. Did he talk to you about teaching  
00:16:51 8 Sunday school?

00:17:06 9 A. I have no memory of him bringing that up.

00:17:08 10 Q. Did he ever talk to you about an ex-fiancee'?

00:17:11 11 A. Yes.

00:17:14 12 THE COURT: A what? I didn't hear your  
00:17:16 13 question. Talk to you about a what?

00:17:18 14 MS. KELLEY: Ex-fiancee'.

00:17:22 15 A. He said he had a girlfriend with whom he was  
00:17:25 16 sexually active which ended with this -- these charges.

00:17:30 17 Q. So she was -- she was only an ex-girlfriend?

00:17:34 18 A. He called her a girlfriend.

00:17:35 19 Q. Not a fiancee'?

00:17:37 20 A. He did not.

00:17:42 21 Q. Now, I want to go back to the tests you performed  
00:17:46 22 as to his, I guess, sexual development and education;  
00:17:52 23 would that be correct?

00:17:53 24 A. Yes.

00:17:55 25 Q. Any indications of deviancy during the course of

00:18:00 1 that testing?

00:18:05 2 A. Using the word "test," I'm pretty careful about  
00:18:10 3 what I described as a test. What I gave him was a life  
00:18:13 4 history questionnaire about psychosexual issues, and it  
00:18:17 5 asks a bunch of questions about psychosexual  
00:18:21 6 development. So it's not a test in the sense that it's  
00:18:27 7 normed. It's not a test in the sense that it allows any  
00:18:31 8 kind of clear comparison against standards. It's a  
00:18:39 9 questionnaire. So there's a lot of room about how he  
00:18:42 10 answers it, and it's answered in essay form, some of it.

00:18:46 11 Q. Okay. Was there an opportunity for Alex to  
00:18:50 12 discuss any supposed interest in child pornography?

00:18:56 13 A. Yes.

00:18:56 14 Q. There was an opportunity?

00:18:58 15 A. Yes.

00:18:58 16 Q. And did he, in fact, discuss any interest in  
00:19:02 17 child pornography?

00:19:03 18 A. He denied interest in child pornography. And  
00:19:07 19 there were a number of questions specifically addressing  
00:19:13 20 interest in children as sex objects, interest in  
00:19:16 21 children -- arousal around children, arousal around  
00:19:19 22 pictures of children, arousal around forms of sexual --  
00:19:26 23 of sexualized pictures with teenagers, young teenagers.

00:19:32 24 Q. And he denied any interest in that?

00:19:35 25 A. He generally denied an interest in anything other

00:19:40 1 than people within about three or four years of his age.

00:19:48 2 Q. So I want to return to the statement which he  
00:19:55 3 allegedly signed at police headquarters. Do you recall  
00:19:59 4 examining that statement?

00:20:01 5 A. Yes.

00:20:03 6 Q. And do you recall discussing it with Alex?

00:20:05 7 A. Yes.

00:20:09 8 Q. And based on your interview with Alex, why would  
00:20:15 9 he sign such a statement?

00:20:19 10 A. Alex indicated -- I don't know that I can say  
00:20:26 11 with absolute certainty, but Alex indicated that it was  
00:20:30 12 a three- or four-hour interrogation. The officer was  
00:20:37 13 angry, as Alex recalls it, and pushing hard. And then  
00:20:44 14 the officer stopped -- for three or four hours. Then  
00:20:48 15 the officer stopped and started typing something up  
00:20:50 16 which Alex said seemed to be something which the officer  
00:20:56 17 implied would stop the process, stop the interrogation  
00:21:01 18 and stop the charges. There was a specific -- as Alex  
00:21:06 19 recalled it, the officer said to him, this letter is to  
00:21:19 20 the prosecutor, and there's no reason to follow this  
00:21:21 21 further.

00:21:23 22 Q. And did Alex tell you if he believed him?

00:21:26 23 A. Alex said that he believed him at the time.  
00:21:32 24 Well, he said the guy lied.

00:21:40 25 Q. Based on your interviews with Alex and your

00:21:44 1 review of the materials, what type of relationship does  
00:21:47 2 Alex have with people in authority?

00:21:54 3 A. At the time that this was going on -- Alex is  
00:21:59 4 generally not very independent; he tended to rely on  
00:22:07 5 people in authority. He was somewhat emotionally  
00:22:10 6 dependent and tended to be compliant for the most part.  
00:22:14 7 He was not somebody particularly rebellious. He went  
00:22:21 8 along with those in authority because for the most part,  
00:22:25 9 he assumed that they were more knowledgeable than him.

00:22:30 10 Q. All right. And did you discuss with him at all  
00:22:33 11 his relationship with his father?

00:22:35 12 A. Yes.

00:22:35 13 Q. And will you tell the jury how he described that  
00:22:39 14 relationship.

00:22:57 15 A. He thought that his father was supportive;  
00:22:59 16 friendly; loving; disciplined, as in following a  
00:23:03 17 structure; had no difficulty in confiding with his  
00:23:10 18 parents. And he thought that they treated him in a fair  
00:23:16 19 fashion that was similar to his brother and sister.

00:23:19 20 Q. All right. Thank you. Now, a few final  
00:23:25 21 questions. Doctor, you've been in practice how many  
00:23:31 22 years?

00:23:32 23 A. I've been licensed for 33 years.

00:23:34 24 Q. And how many years have you testified in court?

00:23:36 25 A. Thirty-three years.

00:23:37 1 Q. Thirty-three years. And have you testified only  
00:23:41 2 for the defense?

00:23:44 3 A. Actually, for the most part I only perform  
00:23:48 4 evaluations -- for the most part, 80 or 90 percent of  
00:23:53 5 the time, I only perform evaluations when I am court  
00:23:56 6 ordered, court appointed, so I enter neutral. I have  
00:23:59 7 testified for both prosecution and defense, depending on  
00:24:03 8 what my opinion is after that.

00:24:06 9 Q. And in the spirit of full disclosure, are you  
00:24:11 10 being paid the today?

00:24:12 11 A. Yes. For my time here, yes.

00:24:14 12 Q. And would that in any way influence your  
00:24:18 13 opinions?

00:24:20 14 A. No.

00:24:21 15 Q. All right. I'm sorry to jump around, but I  
00:24:30 16 thought of one more thing. You testified a bit earlier  
00:24:34 17 that Alex appears to be a bit compliant. Do you recall  
00:24:40 18 saying that?

00:24:40 19 A. Yes.

00:24:42 20 Q. Would an extension of that be that Alex tends to  
00:24:49 21 blame other people for his problems?

00:24:53 22 A. Well, at this point he is less trusting and more  
00:24:56 23 angry and more blaming.

00:25:01 24 MS. KELLEY: All right. Thank you. No more  
00:25:03 25 questions.



00:25:16

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00:25:16

2

WAYNE GRAVES, Ph.D., CROSS-EXAMINATION

00:25:17

3

BY MR. CRAWFORD:

00:25:17

4

Q. Dr. Graves, you made a report of your evaluation

00:25:21

5

of Mr. Cook; is that correct?

00:25:22

6

A. That's correct.

00:25:22

7

Q. It's dated June 22, 2011?

00:25:25

8

A. Yes.

00:25:25

9

Q. Has your opinion changed at all today since you

00:25:29

10

wrote that report in June?

00:25:30

11

A. No.

00:25:30

12

Q. Okay. And is it fair to say that the gist of

00:25:34

13

your analysis was that Mr. Cook may say untrue things to

00:25:38

14

end an interrogation or a lengthy interview?

00:25:40

15

A. He may say compliant things. He may say things

00:25:44

16

to get someone off his back. He may say things that are

00:25:50

17

conceding just to end an interrogation, yes.

00:25:55

18

Q. Untrue things?

00:25:57

19

THE COURT: The last part of your answer?

00:25:58

20

I'm sorry. I didn't hear the last part of your answer.

00:26:02

21

THE WITNESS: Conceding things in order to

00:26:04

22

end an interrogation.

00:26:06

23

Q. So your testimony is nonetheless he would be

00:26:08

24

truthful in that situation?

00:26:10

25

A. No, I didn't say that. He would say anything

00:26:12 1 that would end an interrogation if there was enough  
00:26:16 2 pressure or intensity to it.

00:26:18 3 Q. So it might be untrue things?

00:26:20 4 A. It might be an untrue thing.

00:26:21 5 Q. And you met with him on a couple of occasions?

00:26:24 6 A. Yes.

00:26:25 7 Q. Was your interview with him confrontational?

00:26:27 8 A. It was about several subjects, yes.

00:26:29 9 Q. And were you confident that he was telling you  
00:26:34 10 the truth during those times?

00:26:35 11 A. I was confident that he was truthful for the most  
00:26:42 12 part in the testing that I did because there are some  
00:26:46 13 ways for me to evaluate that. I was -- I believe that  
00:26:51 14 he was withholding some information and downplaying some  
00:26:56 15 aspects of his sexual life because he was still  
00:27:03 16 embarrassed somewhat about psychosexual issues;  
00:27:07 17 masturbation, for instance.

00:27:09 18 Q. At the beginning of the process you asked him to  
00:27:12 19 sign a waiver of confidentiality, didn't you?

00:27:15 20 A. I asked him to sign a waiver of confidentiality  
00:27:18 21 to his attorney and a -- an explanation that this  
00:27:23 22 information might end up in court, yes.

00:27:25 23 Q. And he signed an acknowledgment that this had  
00:27:29 24 been explained to him by you?

00:27:30 25 A. Yes.

00:27:31 1 Q. And that he knew his report would go to his  
00:27:34 2 federal public defender?

00:27:36 3 A. Yes.

00:27:36 4 Q. And who may or may not use that material in the  
00:27:38 5 report as part of his defense?

00:27:40 6 A. Yes.

00:27:40 7 Q. You explained that to him, correct?

00:27:43 8 A. Several times.

00:27:44 9 Q. Did you believe he understood you?

00:27:46 10 A. I thought he understood that I was not going to  
00:27:49 11 keep secrets and that the information was going to go to  
00:27:53 12 his defender and might go to the Court.

00:27:55 13 Q. And you continued your evaluation anyway,  
00:27:58 14 correct?

00:27:58 15 A. I did.

00:28:06 16 Q. And you concluded in your report that you  
00:28:11 17 determined Mr. Cook was capable of understanding any  
00:28:14 18 potential consequences of trial in this case?

00:28:18 19 A. I thought that he seemed to understand the basics  
00:28:23 20 of trial and the consequences of generally having some  
00:28:29 21 significant punishment attached to being found guilty.

00:28:39 22 Q. And you determined his level of performance; you  
00:28:42 23 judged it to be adequate to answer computer  
00:28:44 24 administrative test protocols?

00:28:47 25 A. Yes.

00:28:47 1 Q. So that means you could set him down in front of  
00:28:49 2 a computer and have him answer questions?

00:28:51 3 A. His reading level was at the -- barely at the  
00:28:55 4 minimum level required, fifth grade reading level, sixth  
00:29:00 5 grade reading level.

00:29:01 6 Q. Dr. Graves, you could sit him down in front of a  
00:29:05 7 computer and ask him to answer questions; is that true?

00:29:07 8 A. Well, I'm trying to answer that in terms of the  
00:29:10 9 reading level required, which is fifth grade reading  
00:29:14 10 level. Yes.

00:29:15 11 Q. You also sent paperwork home with him. Is that  
00:29:18 12 true?

00:29:18 13 A. That's true.

00:29:19 14 Q. And he returned that to you?

00:29:20 15 A. He did.

00:29:21 16 Q. And you used it in your report?

00:29:23 17 A. I did.

00:29:29 18 Q. All right. You also discussed with Mr. Cook and  
00:29:32 19 he provided you information concerning his computer  
00:29:34 20 usage; is that true?

00:29:35 21 A. Yes.

00:29:36 22 Q. And he admitted to you that he used LimeWire; is  
00:29:41 23 that correct?

00:29:41 24 A. That's correct.

00:29:41 25 Q. And he admitted to downloading music using

00:29:46 1 LimeWire?

00:29:46 2 A. Yes.

00:29:47 3 Q. And he admitted he viewed adult pornography?

00:29:51 4 A. Yes.

00:29:51 5 Q. And he admitted he used LimeWire to download  
00:29:54 6 adult pornography; isn't that true?

00:29:57 7 A. I'd have to go back and look, but I think so.

00:30:12 8 Yes, he did.

00:30:12 9 Q. And he, in fact, admitted to you that he saw on  
00:30:15 10 his computer child pornography; isn't that true?

00:30:18 11 MS. KELLEY: Excuse me. I couldn't hear  
00:30:20 12 that last phrase.

00:30:21 13 Q. He admitted to you that he saw child pornography  
00:30:24 14 on his computer; is that correct?

00:30:25 15 A. He said a couple images of child pornography  
00:30:27 16 popped up when he first turned his computer on, yes.

00:30:30 17 Q. And he indicated he deleted them; is that true?

00:30:33 18 A. That's what he said.

00:30:33 19 Q. And he provided a description of the girl who was  
00:30:37 20 in the child pornography?

00:30:37 21 A. He did.

00:30:38 22 Q. That was 14 or 15 years old with breasts and no  
00:30:42 23 body hair; is that true?

00:30:43 24 A. Yes. Small breasts, no body hair.

00:30:51 25 Q. He gave you a description of his interview with

00:30:53 1 FBI Agent Pape?

00:30:54 2 A. He did.

00:30:54 3 Q. And in that interview he told you that Special  
00:30:58 4 Agent Pape sat there yelling at me calling me an idiot  
00:31:01 5 for three or four hours?

00:31:03 6 A. Yes.

00:31:04 7 Q. And he also said to you he had no clue what it  
00:31:07 8 was about?

00:31:08 9 A. That's what he said.

00:31:08 10 Q. And he told you that the statement that Special  
00:31:11 11 Agent Pape prepared was a letter to the prosecutor that  
00:31:14 12 there is no reason to follow this further?

00:31:16 13 A. That's what he said.

00:31:18 14 Q. All right. And Mr. Cook also talked to you about  
00:31:21 15 his roommate. Is that true?

00:31:23 16 A. Yes.

00:31:28 17 Q. And he indicated that he mistrusts his roommate?

00:31:32 18 A. He does now.

00:31:32 19 Q. He indicated that his roommate wrecked his  
00:31:35 20 four-wheeler and didn't repay him?

00:31:37 21 A. Yes.

00:31:38 22 Q. His roommate stuck him with a \$350 cable bill for  
00:31:42 23 the apartment?

00:31:42 24 A. Yes.

00:31:43 25 Q. The roommate never helped him pay for it?

00:31:46 1 A. Yes.

00:31:46 2 Q. He indicated, referring to himself, "I was  
00:31:48 3 stupid. He's a jerk"? It's page 6 of the record, the  
00:32:01 4 first full paragraph.

00:32:07 5 A. Yes.

00:32:09 6 Q. And you indicated apparently there were other  
00:32:11 7 bills he was forced to pay because the roommate, quote,  
00:32:15 8 swears he paid it?

00:32:17 9 A. Yes.

00:32:17 10 Q. And Mr. Cook described his roommate as having no  
00:32:21 11 job, being lazy, yet he called Mr. Cook lazy. Is that  
00:32:25 12 true?

00:32:27 13 A. Yes.

00:32:29 14 Q. He also made statements about the FBI in this  
00:32:31 15 case; isn't that true?

00:32:34 16 A. Yes.

00:32:35 17 Q. He said that he trusted the FBI?

00:32:39 18 A. He did say that.

00:32:41 19 Q. And he trusted the FBI not to mess me over, and  
00:32:43 20 they all lied to me. Isn't that true?

00:32:45 21 A. That was his statement.

00:32:46 22 Q. He said, I was helpful in any way I could be to  
00:32:49 23 them because I had nothing to hide. He said that,  
00:32:52 24 didn't he?

00:32:53 25 A. Yes.

00:32:53 1 Q. And he said, "When I found out other things they  
00:32:56 2 forgot to look at, I called them, asked them if they  
00:32:59 3 wanted to come and get them." He said that?

00:33:00 4 A. That's what he said.

00:33:01 5 Q. And he said, "I signed a waiver for them to  
00:33:04 6 search my vehicle"?

00:33:05 7 A. Yes.

00:33:05 8 Q. "I was trying to be helpful, and they messed me  
00:33:08 9 over." Did he say that?

00:33:09 10 A. He did say that.

00:33:10 11 Q. Did he indicate that he's angry with this  
00:33:13 12 process; called it ridiculous, unfair, uncalled for, and  
00:33:17 13 one-sided"? Page 7, Dr. Graves. Second full  
00:33:38 14 paragraph.

00:33:39 15 A. Yes.

00:33:44 16 Q. And he never indicated to you that he believed he  
00:33:48 17 was a victim of identity theft?

00:33:51 18 A. He did not.

00:33:51 19 Q. And he never indicated to you that he thought his  
00:33:53 20 roommate had downloaded child pornography on his  
00:33:57 21 computer, did he?

00:33:59 22 A. No.

00:34:16 23 MR. CRAWFORD: No further questions, Judge.

00:34:18 24 THE COURT: Redirect?

00:34:19 25 MS. KELLEY: Yes. Thank you.



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WAYNE GRAVES, Ph.D., REDIRECT EXAMINATION

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BY MS. KELLEY:

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Q. Sir, you authored this report in May of this year, correct?

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A. June of this year.

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Q. June of this year. Three, four months ago, correct?

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A. Yes.

00:34:28

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Q. And if you remember, who was the attorney on the case at that point?

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A. Attorney Donna Grill.

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Q. All right. Not Elizabeth Kelley?

00:34:43

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A. No.

00:34:47

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Q. Now, what grade reading level did Alex perform at?

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A. His reading level was at a seventh grade equivalent, which is a 14th percentile. His spelling was at a fifth percentile, fifth grade level.

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Q. All right. And recalling your attention again to the supposed confession which he signed, given the circumstances at the FBI office that morning, would Alex have been able to have fully comprehended what he was reading if, in fact, he could read it?

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MR. SECOR: Objection, Your Honor. There's

00:35:38 1 been no testimony that he knew what the circumstances  
00:35:40 2 were that morning of the confession.

00:35:45 3 MS. KELLEY: Well --

00:35:47 4 THE COURT: Why don't you lay those  
00:35:49 5 circumstances out.

00:35:50 6 MS. KELLEY: All right.

00:35:51 7 BY MS. KELLEY:

00:35:51 8 Q. Describe for the jury then the circumstances  
00:35:54 9 under which you understood Alex to have reviewed that  
00:36:00 10 confession that morning?

00:36:03 11 A. He was called in for an interview by the Special  
00:36:10 12 Agent. It was the first time that he had been in any  
00:36:13 13 kind of serious trouble. He said the interrogation --  
00:36:21 14 "interrogation" was his word -- went on for three or  
00:36:23 15 four hours. And the agent was yelling at him, calling  
00:36:27 16 him stupid. There were several derogatory statements  
00:36:37 17 about it. And that it went on for a significant period  
00:36:40 18 of time. And in that atmosphere when it suddenly seemed  
00:36:46 19 to let up, and the agent was typing something, Alex felt  
00:36:51 20 a sense of relief and wanting to get out of there.

00:36:55 21 Q. Why did he feel a sense of relief?

00:36:57 22 A. Well, that the intense, angry interrogation had  
00:37:02 23 stopped.

00:37:04 24 Q. All right.

00:37:06 25 MS. KELLEY: Is that a sufficient

00:37:07 1 foundation, Your Honor, to pursue --

00:37:10 2 MR. CRAWFORD: Your Honor, the objection  
00:37:11 3 still stands. This is all based upon --

00:37:14 4 THE COURT: Approach.

00:37:16 5 (Whereupon the following discussion was had  
00:38:30 6 at the bench outside the hearing of the jury:)

00:38:30 7 THE COURT: Your objection?

00:38:30 8 MR. SECOR: My objection is all this is  
00:38:30 9 based upon the defendant's self-reporting. He's not  
00:38:30 10 making an opinion based on what actually happened or  
00:38:30 11 what the government contends happens. On a self-report  
00:38:30 12 here.

00:38:30 13 THE COURT: I understand. But I assume that  
00:38:32 14 defendant will testify to that fact, and based upon his  
00:38:32 15 understanding as communicated by the defendant, and you  
00:38:32 16 can dispute that and you can ask on cross-examination,  
00:38:32 17 well, what if these were the facts?

00:38:32 18 MR. SECOR: All right.

00:38:32 19 MS. KELLEY: I'm confused. I thought this  
00:38:33 20 was Mr. Crawford's witness.

00:38:33 21 MR. CRAWFORD: We'll be mindful of that.

00:38:33 22 (End of sidebar discussion.)

00:38:33 23 THE COURT: You may continue.

00:38:35 24 MS. KELLEY: Thank you, Your Honor.

00:38:37 25 BY MS. KELLEY:

00:38:38 1 Q. Doctor, based on your interviews with Alex and  
00:38:42 2 your reviews of the materials, do you have an opinion as  
00:38:49 3 to why Alex would sign such a statement?

00:38:51 4 A. Yes.

00:38:51 5 Q. And please tell the jury that opinion?

00:38:55 6 A. Because he doesn't trust his own ability to  
00:39:00 7 understand documents very well, because he is passive  
00:39:05 8 and somewhat conflict-avoidant with adults, and because  
00:39:11 9 he wanted to escape from the interrogation situation and  
00:39:14 10 thought that's what he was being offered if he signed.

00:39:20 11 MS. KELLEY: All right. Thank you. No  
00:39:22 12 further questions.

00:39:42 13 - - -

00:39:42 14 WAYNE GRAVES, Ph.D., RECROSS-EXAMINATION  
00:39:43 15 BY MR. CRAWFORD:

00:39:43 16 Q. Dr. Graves, Mr. Cook's statement that he was  
00:39:47 17 being interrogated for three or four hours while an  
00:39:49 18 agent was yelling at him calling him an idiot, that  
00:39:53 19 factored in your determination in your evaluation of Mr.  
00:39:57 20 Cook, didn't it?

00:39:58 21 A. Yes.

00:39:58 22 Q. And had that circumstance about the interrogation  
00:40:02 23 been untrue, that would have changed your opinion?

00:40:06 24 A. It might have.

00:40:08 25 Q. And had Mr. Cook voluntarily went down to the FBI

00:40:17 1 office, had not been detained, not been arrested, and  
00:40:20 2 not been in an interrogation, could that have changed  
00:40:24 3 your opinion and your evaluation of Mr. Cook?

00:40:30 4 A. I guess it depends on -- again, this is -- Mr.  
00:40:34 5 Cook's subjective view of his experience is more  
00:40:39 6 important than the practical elements of it. However,  
00:40:44 7 if he -- if it was less than three or four hours by a  
00:40:48 8 significant margin, if there wasn't as much yelling as  
00:40:51 9 he proposes, those would have been important.

00:40:55 10 Q. And his subjective evaluation as you understand  
00:40:58 11 it is based entirely on his self-reporting to you?

00:41:00 12 A. That's what I had available.

00:41:05 13 MR. CRAWFORD: Thank you.

00:41:08 14 - - -

00:41:08 15 WAYNE GRAVES, Ph.D., FURTHER REDIRECT EXAMINATION  
00:41:12 16 BY MS. KELLEY:

00:41:12 17 Q. Just one question. Subjective often means  
00:41:15 18 self-reporting, doesn't it?

00:41:17 19 A. Yes.

00:41:18 20 MS. KELLEY: Thank you. No more questions.

00:41:20 21 THE COURT: You may step down. You're free  
00:41:21 22 to go or welcome to stay; it's entirely up to you.

00:41:35 23 Are you ready to resume with the prosecution  
00:41:37 24 case?

00:41:37 25 MR. CRAWFORD: We are, Your Honor. We would

00:41:39 1 call Detective David Morford.

00:41:42 2 MS. KELLEY: Excuse me, Your Honor. Could  
00:41:44 3 we have a brief recess?

00:41:45 4 THE COURT: Sure. About five minutes or so?

00:41:51 5 Ladies and gentlemen, if you want to step  
00:41:53 6 out for a moment, that's fine.

00:51:22 7 (Recess taken.)

00:51:25 8 THE COURT: Ready to resume?

00:51:27 9 MR. CRAWFORD: Our next witness IS Detective  
00:51:29 10 David Morford of the Toledo Police Department.

00:51:31 11 THE COURT: What are we going to hear?

00:51:33 12 MR. CRAWFORD: Detective Morford conducted a  
00:51:37 13 forensic analysis of the computer seized from the  
00:51:40 14 Knollwood apartment.

00:51:42 15 (The witness was sworn by the clerk.)

00:51:51 16 THE COURT: Good afternoon. Have a seat.  
00:51:54 17 Tell the ladies and gentlemen your name, please.

00:51:55 18 THE DEFENDANT: David Morford,  
00:51:57 19 M-o-r-f-o-r-d.

00:52:00 20 THE COURT: Maybe a little closer. Not too  
00:52:03 21 much closer.

00:52:14 22 THE WITNESS: David Morford, M-o-r-f-o-r-d.

00:52:17 23 THE COURT: Can you hear okay, ladies and  
00:52:19 24 gentlemen?

00:52:20 25 And what is your occupation or profession?

00:52:24 1 THE WITNESS: I'm a detective with the  
00:52:25 2 Toledo Police Department.

00:52:26 3 THE COURT: How long have you been with the  
00:52:28 4 TPD?

00:52:29 5 THE WITNESS: Seventeen years.

00:52:30 6 THE COURT: And how long have you held the  
00:52:32 7 rank of detective?

00:52:33 8 THE WITNESS: Six years.

00:52:34 9 THE COURT: And what do you do presently?

00:52:36 10 THE WITNESS: I'm in the computer crimes  
00:52:38 11 unit, mainly computer forensics.

00:52:41 12 THE COURT: How long have you been doing  
00:52:42 13 that sort of work?

00:52:43 14 THE WITNESS: Six years.

00:52:44 15 THE COURT: What sort of training or  
00:52:45 16 preparation did you have for it?

00:52:46 17 THE WITNESS: I've been to several  
00:52:49 18 trainings: Basic data recovery and acquisition; network  
00:52:55 19 intrusive response for the Secret Service; Access Data  
00:52:58 20 boot camp, which is the software that we use for  
00:53:01 21 forensics; practical examiner test for Access Data;  
00:53:05 22 advanced forensics, basic computer recovery and evidence  
00:53:12 23 response. I'm an ICAC or InCAC instructor.

00:53:19 24 THE COURT: What does that stand for?

00:53:20 25 THE WITNESS: Internet Crimes Against

00:53:21 1 Children.

00:53:22 2 THE COURT: Instructor where?

00:53:26 3 THE WITNESS: For their ICAC program,  
00:53:28 4 conducting online investigations with things such as  
00:53:32 5 Facebook and My Space.

00:53:33 6 THE COURT: Is that here in Toledo or  
00:53:35 7 elsewhere?

00:53:36 8 THE WITNESS: It's nationwide.

00:53:38 9 THE COURT: I meant the instruction; where  
00:53:39 10 do you do that?

00:53:40 11 THE WITNESS: We don't have enough people  
00:53:42 12 here that can do it.

00:53:47 13 THE COURT: Mr. Crawford, continue.

00:53:50 14 - - -

00:53:50 15 DAVID MORFORD, DIRECT EXAMINATION

00:53:51 16 BY MR. CRAWFORD:

00:53:51 17 Q. Mr. Morford, I'm handing you what's been  
00:53:55 18 identified as Government's Exhibit 7. Do you recognize  
00:53:58 19 that item?

00:53:58 20 A. I do.

00:53:59 21 Q. How do you recognize that?

00:54:00 22 A. It's just a bag that was brought to me, that was  
00:54:04 23 brought to me along with the rest of the items in the  
00:54:07 24 case. It was sealed when I got it.

00:54:08 25 Q. Can you describe the condition it was in the bag



00:54:11 1 when you?

00:54:11 2 A. This was sealed, and I would have cut it to open  
00:54:15 3 it so I could get to the laptop inside.

00:54:18 4 Q. At the time you received it, did it appear to  
00:54:21 5 have been opened and resealed several times or --

00:54:23 6 A. No.

00:54:23 7 Q. Just one seal?

00:54:25 8 A. I think I broke the seal, the original seal.

00:54:28 9 Q. And what did you find inside there?

00:54:30 10 A. There's a laptop, an HP; the battery is out.  
00:54:37 11 And a power cord.

00:54:38 12 Q. Can you remove those items from the bag, please.

00:54:52 13 To your recollection are the items that are  
00:54:54 14 before you today the items that were in that bag when  
00:54:57 15 you first received it?

00:54:59 16 A. Yes.

00:55:01 17 Q. And at the time you first received that computer,  
00:55:09 18 did you -- could you just generally describe what  
00:55:11 19 condition it was in?

00:55:12 20 A. Exactly this condition. The battery was out,  
00:55:15 21 power cable was separate, exactly like it is now.

00:55:19 22 Q. Was there any indication that it had been  
00:55:21 23 tampered with, damaged, that you could tell?

00:55:24 24 A. No. It's in pretty good shape.

00:55:28 25 Q. Perhaps I asked you this, but does it appear

00:55:31 1 today as it did when you first opened the bag to examine  
00:55:35 2 it?

00:55:35 3 A. Yes, it does.

00:55:38 4 Q. Could you please describe briefly for the jury  
00:55:41 5 the capabilities of a computer. Is a computer able to  
00:55:45 6 store information?

00:55:45 7 A. Absolutely.

00:55:46 8 Q. How does it do that?

00:55:47 9 A. Computers have hard drives inside of them. It's  
00:55:52 10 a piece of media that stores data, the operating system,  
00:55:54 11 files, whatever you choose to put on there.

00:55:56 12 Q. And what sort of files could these be?

00:56:00 13 A. Anything; documents, pictures, movies,  
00:56:03 14 spreadsheets, e-mail.

00:56:05 15 Q. You said they're stored on a hard drive. Could  
00:56:08 16 you describe what physically a hard drive looks like?

00:56:11 17 A. A hard drive is -- in this particular laptop it's  
00:56:15 18 a small square, probably four inches by five and a half  
00:56:21 19 inches, maybe three-quarters of an inch thick. There's  
00:56:25 20 platters inside that the media is stored on. And those  
00:56:29 21 platters spin, if it's a normal hard drive. There are  
00:56:32 22 SD drives that have no moving parts; it just stores data  
00:56:36 23 in sectors on the drive.

00:56:37 24 Q. The computer can store and retrieve data from  
00:56:40 25 this hard drive?

00:56:41 1 A. Yes.

00:56:42 2 Q. If you want to know what's contained on that hard  
00:56:44 3 drive, what do you have to do?

00:56:47 4 A. What we do is image the hard drive. We pull the  
00:56:50 5 original hard drive out of the machine; we log the drive  
00:56:54 6 serial number and the type, and then we make a duplicate  
00:56:57 7 sector by sector, bit by bit of the original, and then  
00:57:02 8 we analyze the copy. We put the original back in the  
00:57:07 9 original machine, and we don't touch it again.

00:57:09 10 Q. Why do you do that as opposed to just, say, turn  
00:57:12 11 on the computer and look around to see what's there?

00:57:14 12 A. For several reasons. The first reason is if you  
00:57:17 13 do your work off of an image, you don't have to worry  
00:57:20 14 about disturbing the original media, changing anything  
00:57:23 15 on it, even inadvertently. We image through a write  
00:57:28 16 blocker so there's no chance of us writing to that  
00:57:31 17 drive. So the image we make is as the drive was when we  
00:57:34 18 pull it out.

00:57:35 19 The second reason that we work off an image is  
00:57:38 20 because like any piece of equipment, it can break. And  
00:57:41 21 you want to touch the drive as little as possible so you  
00:57:44 22 don't have a failure and have the drive then be  
00:57:46 23 inoperable for whatever reason.

00:57:48 24 Q. Did that computer have a hard drive in it?

00:57:50 25 A. Yes.

00:57:50 1 Q. And did you make an effort to make an image of  
00:57:53 2 that part of it?

00:57:53 3 A. I did.

00:57:54 4 Q. Please describe that process.

00:57:55 5 A. We plug the original drive into -- we have a  
00:58:01 6 machine called a FRED, which in essence is a big  
00:58:05 7 computer.

00:58:05 8 Q. Could you step back even farther. You have the  
00:58:08 9 computer in front of you. You want to make an image.  
00:58:10 10 What do you do?

00:58:11 11 A. The first thing I do is log the computer serial  
00:58:14 12 number. If there's any damage on the computer at that  
00:58:16 13 time or anything that stands out, I would note that,  
00:58:18 14 that the machine looks operable.

00:58:21 15 I then remove the hard drive. It's usually on a  
00:58:24 16 panel under the bottom of the laptop held by a couple  
00:58:27 17 screws. Remove the hard drive; I log the hard drive's  
00:58:29 18 information for my supplemental. Then I take the hard  
00:58:33 19 drive, the original, and I plug it into a write blocker  
00:58:37 20 on our FRED, which stands for Forensic Recovery of  
00:58:44 21 Evidence Device. It's just a big computer. We plug it  
00:58:49 22 into a write blocker so we can access the drive but we  
00:58:51 23 cannot make changes to the drive; we can't write to it  
00:58:55 24 in any way. We then use some software called Access  
00:58:58 25 Data Imager to make a duplicate of the drive.

00:59:06 1 Q. And when you make this duplicate, what's the end  
00:59:09 2 product?

00:59:10 3 A. The end product is a series of image files that  
00:59:13 4 are 1500 megs in size each until the entire drive from  
00:59:18 5 beginning to end is written. The image it writes from  
00:59:22 6 the very first bit in the very first sector on the drive  
00:59:25 7 to the very end of the drive, the very last bit, very  
00:59:29 8 last sector, all of the deleted space, the free space,  
00:59:33 9 every part of the drive is imaged.

00:59:36 10 Then it's hashed, which in essence is an  
00:59:41 11 algorithm thrown against the original drive, is a  
00:59:43 12 mathematical algorithm which spits back a result that's  
00:59:47 13 called a hash value. Then our image is hashed. And the  
00:59:51 14 image should be -- in this case it was identical.

00:59:54 15 Q. Could you explain a little more what a hash value  
00:59:57 16 is, how it's derived and what it tells you about a  
01:00:00 17 particular computer file?

01:00:01 18 A. It is a mathematical algorithm that is thrown at  
01:00:05 19 the hard drive.

01:00:05 20 Q. What do you mean, "thrown at"?

01:00:07 21 A. It is applied to the drive as the data sits. And  
01:00:10 22 it gives a response, which is a string of -- a very long  
01:00:15 23 string of numbers and letters. It's unique to that  
01:00:18 24 drive as the data on that drive sits. If you were to  
01:00:21 25 change any data on the drive at all, the algorithm, the

01:00:24 1 response will change. That's the hash value. It's  
01:00:27 2 similar to a DNA strand for the -- that would be how I  
01:00:31 3 would equate it. And then the hash is also applied to  
01:00:36 4 our image as it sits to make sure that it's identical.

01:00:40 5 Q. Okay. You indicated in this case the hash value  
01:00:45 6 from the computer in front of you was the same as the  
01:00:47 7 image. What does that tell you about the image?

01:00:49 8 A. When I was trained on hash values I was told that  
01:00:53 9 the chances of two separate hard drives, two different  
01:00:56 10 hard drives having identical hash values is less than  
01:01:00 11 one in 490 quadrillion. So it tells me it's an  
01:01:06 12 identical copy I'm looking at (.

01:01:10 13 Q. Once you made this image, were you able to  
01:01:13 14 examine or view this image in a virtual environment?

01:01:17 15 A. I was.

01:01:18 16 Q. Could you just describe, please, how that process  
01:01:21 17 works?

01:01:21 18 A. I used a piece of software called Virtual Box.  
01:01:26 19 It is a piece of software that runs within my computer,  
01:01:30 20 like any other piece of software. Within Virtual Box I  
01:01:33 21 can take my image and I can mount it as if it were a  
01:01:37 22 hard drive on my machine virtually. I can then have  
01:01:43 23 Virtual Box boot that image as if I were sitting in  
01:01:46 24 front of the laptop myself, booting the machine up on  
01:01:51 25 the actual machine. Everything is virtualized; the

01:01:54 1 video card, everything within Virtual Box is a virtual  
01:01:58 2 environment. It doesn't touch my host. It's just a  
01:02:01 3 piece of software running on my machine.

01:02:05 4 Q. So you're basically able to take the image and  
01:02:07 5 view that computer as if you had turned the computer on  
01:02:10 6 in front of you?

01:02:10 7 A. Correct.

01:02:11 8 Q. And when you took a look at this image, what sort  
01:02:17 9 of steps did you have to take to eventually access the  
01:02:20 10 computer?

01:02:20 11 A. When I first booted the machine up, there were --  
01:02:25 12 there's an account on the machine, a login account which  
01:02:29 13 most newer windows machines have; it's password  
01:02:32 14 protected. The only other way onto the machine -- there  
01:02:35 15 were two ways of access, the logon password, which I  
01:02:39 16 didn't have; or biometric, which is fingerprint reader.  
01:02:44 17 We used a piece of software called Paragon Rescue Disk,  
01:02:48 18 which we can put between the boot process -- we can boot  
01:02:52 19 from a CD to Paragon, access the registry and wipe the  
01:02:57 20 password so that we can boot into the machine. And  
01:03:00 21 that's what happened.

01:03:01 22 Q. Now, the fact that your image was password  
01:03:03 23 protected, what does that tell you about the laptop in  
01:03:06 24 front of you?

01:03:07 25 A. There's a login password or a biometric reader to

01:03:10 1 get on to it.

01:03:11 2 Q. So someone turning on that computer today would  
01:03:13 3 need a password to access the computer?

01:03:15 4 A. Correct.

01:03:16 5 Q. Let me show you this, what's marked as  
01:03:19 6 Government's Exhibit 15. Do you recognize this image?

01:03:48 7 A. Yes, I do.

01:03:49 8 Q. What is it?

01:03:50 9 A. That's the desktop within Virtual Box of the  
01:03:54 10 image from this laptop.

01:03:56 11 Q. Okay. And up here in the top left corner, what  
01:04:06 12 does that mean?

01:04:06 13 A. That's showing that I'm running Virtual Box, I'm  
01:04:10 14 running a piece of software within my host. And when I  
01:04:14 15 started up this virtual machine, I named it Cook so I  
01:04:17 16 knew what I was looking at because that's the case I was  
01:04:20 17 working on.

01:04:20 18 Q. The computer in front of you, if you were to plug  
01:04:23 19 that computer in and turn it on, enter the appropriate  
01:04:26 20 password, what would be the computer screen that you  
01:04:29 21 would see?

01:04:30 22 A. You wouldn't see this blue outline. You would  
01:04:34 23 see the login screen, and once you got by it, you would  
01:04:37 24 see this desktop.

01:04:38 25 Q. What do you mean by this desktop?



01:04:40 1 A. This is what you would see on the screen, all  
01:04:42 2 these icons, this fire wallpaper, or whatever that  
01:04:46 3 actually is.

01:04:47 4 Q. And this photograph that's on the desktop here?

01:04:50 5 A. That, yes, that's what you'd see.

01:04:53 6 Q. And after putting this image in the Virtual Box,  
01:04:59 7 what did you do?

01:05:00 8 A. The first thing that I made note of was there  
01:05:04 9 appeared to be file sharing software that's sitting on  
01:05:08 10 the desktop, the LimeWire, the version of LimeWire. I  
01:05:12 11 then opened up the My Computer.

01:05:14 12 Q. Is this what you're referring to?

01:05:16 13 A. Correct.

01:05:17 14 Q. What is this?

01:05:17 15 A. That's a file sharing program. It's very  
01:05:21 16 popular. It was shut down by the federal government, I  
01:05:24 17 believe, in January.

01:05:25 18 Q. And what does this icon on the desktop represent?

01:05:31 19 A. That's a shortcut to run the program.

01:05:33 20 Q. 5.3.6; what is that?

01:05:36 21 A. That's the version of the software that's on  
01:05:39 22 there.

01:05:47 23 Q. Okay. What's this image?

01:05:49 24 A. This is the documents folder under the account  
01:05:52 25 name "Alex" on this machine.

01:05:57 1 Q. What do you mean by account name "Alex"?

01:05:59 2 A. The account name, when I originally booted the  
01:06:02 3 machine in Virtual Box, was Alex. So that's the name of  
01:06:06 4 the account that you are logging into or accessing when  
01:06:10 5 you go into the machine.

01:06:12 6 Q. Okay. Then over on the left-hand side here,  
01:06:20 7 desktop, there's Alex, then what are these items  
01:06:23 8 underneath?

01:06:23 9 A. That's the file free under that account;  
01:06:25 10 contacts; the desktop, which will show you the icons on  
01:06:29 11 the desktop; the documents, which is what we were in.  
01:06:32 12 There's a downloads folder, favorites links, music; your  
01:06:37 13 iTunes can go in there.

01:06:42 14 Q. Then on the right-hand side of the screen, what  
01:06:47 15 are those items?

01:06:48 16 A. That's going to be the contents of the documents  
01:06:50 17 folder.

01:06:51 18 Q. Are those user created files or system files?

01:06:57 19 A. The bottom seven are going to be documents. The  
01:07:03 20 text documents were probably created with Word Pad, and  
01:07:08 21 the Word documents obviously were created with Microsoft  
01:07:12 22 Word.

01:07:12 23 Q. Are those documents that are automatically  
01:07:18 24 created by windows, or are those documents that a user  
01:07:21 25 would have to create?

01:07:23 1 A. Those are user-created files.

01:07:25 2 Q. What are the two folders at the top, LimeWire and  
01:07:28 3 webcam.

01:07:30 4 A. LimeWire and webcam are files within this folder.

01:07:39 5 Q. What's this screen?

01:07:41 6 A. These are the contents of the LimeWire folder.

01:07:51 7 Q. What is "incomplete"?

01:07:52 8 A. Incomplete is a partial download. With LimeWire  
01:07:57 9 when you initiate a download your download is written to  
01:08:01 10 the incomplete folder until it completes. Once the  
01:08:04 11 download is finished, it transfers to this saved folder  
01:08:07 12 or whatever folder has been designated as -- by the  
01:08:11 13 user.

01:08:11 14 Q. And what is in the saved folder?

01:08:13 15 A. The saved folder in this particular case is going  
01:08:16 16 to be a file library, movies, documents, music.

01:08:21 17 Q. And where does the saved information -- where  
01:08:23 18 does the contents of the saved folder come from?

01:08:25 19 A. In this case they can be downloaded from  
01:08:32 20 LimeWire. They can be copied into that folder by the  
01:08:35 21 user.

01:08:36 22 Q. What does "store purchased" mean?

01:08:39 23 A. Store purchased. LimeWire, they have an option  
01:08:43 24 very similar to iTunes where you can actually go and buy  
01:08:47 25 files.

01:09:12 1 Q. All right. And what is this screen?

01:09:17 2 A. This is going to be the contents of the LimeWire  
01:09:20 3 saved folder.

01:09:21 4 Q. Okay. Briefly before we go on, any passwords  
01:09:32 5 required to use Windows Explorer and view these items  
01:09:36 6 once a person gets past the initial password?

01:09:38 7 A. No.

01:09:39 8 Q. Any special training required to view these  
01:09:41 9 files?

01:09:41 10 A. Just double click.

01:09:43 11 Q. Any special computer program required to uncover  
01:09:47 12 some sort or hidden files in order to view these?

01:09:49 13 A. No.

01:09:49 14 Q. So here we have a blown up portion of the  
01:09:55 15 left-hand side of this slide. What does this represent  
01:09:57 16 again?

01:09:57 17 A. This is the file tree again showing where these  
01:10:00 18 particular files, these particular folders lie within  
01:10:04 19 the file path.

01:10:12 20 Q. All right. And on the left-hand side here -- on  
01:10:16 21 the right hand side, I'm sorry, what is that  
01:10:20 22 information?

01:10:20 23 A. This is going to be the contents of the actual  
01:10:23 24 LimeWire saved folder.

01:10:27 25 Q. All right. And just briefly describe what are

01:10:32 1 some of the contents in the LimeWire saved folder on  
01:10:35 2 this computer?

01:10:36 3 A. Well, the icons on the left side will tell you  
01:10:38 4 what type of file it is. I see JPEGs, which are still  
01:10:43 5 photos; music or audio files of some kind; and one movie  
01:10:49 6 of some kind.

01:10:52 7 Q. And what is -- what are the music files?

01:10:55 8 A. The Forrest Gump soundtrack, that looks like a  
01:11:00 9 song; Shaggy --

01:11:04 10 Q. And you mentioned some images and videos. Are  
01:11:07 11 there any file names here that are indicative to you of  
01:11:10 12 potentially containing child pornography?

01:11:14 13 A. Yes.

01:11:14 14 Q. Could you just identify one please?

01:11:17 15 A. Sure. Youth jailbait private daughter pussy PEDO  
01:11:25 16 Lolita PTHC.

01:11:28 17 Q. Could you identify what PTHC means?

01:11:31 18 A. Preteen hardcore.

01:11:32 19 Q. In your investigations do you routinely come  
01:11:35 20 across that term?

01:11:36 21 A. Yes. It's a common search term used to find  
01:11:41 22 child pornography.

01:11:42 23 Q. In using LimeWire, how does one find files using  
01:11:49 24 LimeWire?

01:11:50 25 A. With LimeWire you do a search by key words. You

01:11:55 1 can -- you'll see that a lot of these files have really  
01:12:00 2 long file names, and that's for a reason, so that you  
01:12:02 3 can hit on them with one key word. So you'd do a search  
01:12:07 4 for whatever key word you're using, and for -- and I  
01:12:10 5 can't tell you these files which key word was used, but,  
01:12:14 6 for example, PTHC, and you will then go out on the  
01:12:18 7 Gnutella network and look for files with PTHC in the  
01:12:21 8 title.

01:12:21 9 Q. Down here in the lower left-hand corner you see  
01:12:25 10 870 items. What does that mean?

01:12:28 11 A. That's the total number of items within this  
01:12:31 12 folder.

01:12:33 13 Q. And within which folder?

01:12:35 14 A. The LimeWire saved.

01:12:52 15 Q. What is this screen?

01:12:53 16 A. This is the same folder. I scrolled down just a  
01:12:56 17 little ways to take some random shots of it. Also shows  
01:13:01 18 the contents of the folder, just farther down.

01:13:04 19 Q. You say this is the LimeWire saved folder?

01:13:06 20 A. It is.

01:13:15 21 Q. And what is this?

01:13:16 22 A. The same, farther down on the same -- just a  
01:13:20 23 random shot of the contents of the saved folder.

01:13:29 24 Q. All right. What are some of the files, types of  
01:13:32 25 files that are located here?

01:13:33 1 A. I see three audio files, and it looks like three  
01:13:38 2 media files, movies.

01:13:40 3 Q. What are the audio files?

01:13:41 4 A. The top three, the Creed, Crossfade and Crystal  
01:13:45 5 Shawanda.

01:13:49 6 Q. Are any of the other files indicative of child  
01:13:55 7 pornography?

01:13:55 8 A. Cute 12 year old being taught by daddy, fisting,  
01:14:00 9 incest, child.

01:14:14 10 Q. What is this screen? It looks different. Please  
01:14:18 11 explain the difference between this screen and the last  
01:14:21 12 screen.

01:14:21 13 A. This is the LimeWire library within the LimeWire  
01:14:24 14 software. So I started the LimeWire software and  
01:14:27 15 actually viewed the library within the software.

01:14:32 16 Q. Okay. So we saw the LimeWire icon on the  
01:14:34 17 desktop, one of the first slides. So you ran that  
01:14:38 18 program?

01:14:38 19 A. Correct.

01:14:39 20 Q. And you ran it from this Virtual Box?

01:14:41 21 A. Correct.

01:14:41 22 Q. And what happened when you ran the program?

01:14:46 23 A. The software starts up.

01:14:49 24 Q. What do you see on the computer screen?

01:14:51 25 A. You'll see the LimeWire logo. It's loading.

01:14:55 1 It's going to try to connect out when it first starts,  
01:14:59 2 but it can't because we don't allow it network access.  
01:15:02 3 And again, LimeWire is shut down.

01:15:05 4 Q. Okay. So is this a home screen for LimeWire?

01:15:09 5 A. This is not the home screen. This is the library  
01:15:12 6 screen. The home screen would connect and show you the  
01:15:15 7 LimeWire logo.

01:15:16 8 Q. What sort of information is contained in this  
01:15:19 9 library screen?

01:15:20 10 A. This is virtually the same -- actually the same  
01:15:25 11 file list that was in the LimeWire saved. This is  
01:15:28 12 actually accessing that folder through the LimeWire  
01:15:30 13 program.

01:15:31 14 Q. Okay. So up here in the top right-hand corner,  
01:15:40 15 what do we have there?

01:15:40 16 A. The number of files within this folder.

01:15:42 17 Q. And is that number the same or different from the  
01:15:45 18 number of files that were in the LimeWire saved folder  
01:15:47 19 that we just looked at?

01:15:48 20 A. It's the same.

01:15:57 21 Q. Any special skills required to view or run  
01:16:00 22 LimeWire on this computer?

01:16:01 23 A. Double click.

01:16:03 24 Q. Any password or anything required to get here  
01:16:06 25 beyond the password to get in initially?



01:16:09 1 A. No.

01:16:09 2 Q. Any special software training needed to see  
01:16:12 3 what's in this library folder?

01:16:13 4 A. No.

01:16:14 5 Q. It is available just to the user of the program?

01:16:16 6 A. Yes.

01:16:17 7 Q. And here, what's displayed here?

01:16:27 8 A. File contents of the folder, the same in the  
01:16:31 9 LimeWire saved. I see some still photos, a movie.

01:16:38 10 Q. These names, where do these names come from? Is  
01:16:40 11 this something that LimeWire makes up, or where do these  
01:16:43 12 names come from?

01:16:44 13 A. These names are the file names. The files are  
01:16:47 14 named, and the user can change a file name.

01:16:49 15 Q. Any file names here consistent with child  
01:16:53 16 pornography?

01:16:53 17 A. Absolutely.

01:16:54 18 Q. Could you identify one?

01:16:55 19 A. "Laurie, 10 YO," which means ten year old,  
01:17:00 20 "daughter, skirt, panties, preteen, dog."

01:17:21 21 Q. What's this screen?

01:17:25 22 A. I can't see it well, but it looks like the  
01:17:30 23 library. Scroll down farther. Another shot.

01:17:36 24 Q. What are these items at the bottom?

01:17:39 25 A. Those are incomplete downloads. With LimeWire

01:17:42 1 you have the option of starting a download. If for some  
01:17:46 2 reason the host that you're downloading the file from  
01:17:48 3 goes offline or you go offline, you have the option of  
01:17:51 4 resuming that download when you come back online. Those  
01:17:55 5 are incomplete downloads.

01:18:07 6 Q. This screen, please describe it.

01:18:10 7 A. The same folder, farther down, farther down in  
01:18:15 8 the files.

01:18:22 9 Q. And what are some of these files?

01:18:25 10 A. Stills and videos.

01:18:27 11 Q. Anything there that would be indicative of child  
01:18:31 12 pornography?

01:18:31 13 A. The top file, "13 year old fucks her dad."

01:18:49 14 Q. And this screen?

01:18:51 15 A. This is the public shared folder within the  
01:18:54 16 LimeWire software.

01:18:56 17 Q. Hold on a second. Previously which folder have  
01:19:03 18 we been looking at?

01:19:03 19 A. We were in the library.

01:19:05 20 Q. Is the library folder on this zoom here?

01:19:08 21 A. It's the top folder.

01:19:09 22 Q. Now you've moved down to the one below?

01:19:12 23 A. Correct.

01:19:13 24 Q. What is a public shared folder?

01:19:15 25 A. That is the folder on -- within LimeWire on your

01:19:18 1 computer that is shared when you're on LimeWire on the  
01:19:22 2 Gnutella network that is shared for other users. If  
01:19:25 3 they have done a key word search and you have a file  
01:19:28 4 that they want, they can download it from you.

01:19:33 5 Q. On the left we have highlighted there public  
01:19:37 6 shared; is that correct?

01:19:38 7 A. I can't see that highlighted, but yes.

01:19:46 8 Q. The shading is not the greatest.

01:19:54 9 A. I can tell it is by the warning on the bottom.

01:19:57 10 Q. We'll get to that in a second. These items here,  
01:20:03 11 what are those?

01:20:05 12 A. Those are the contents of this folder.

01:20:11 13 Q. And are any of those file names indicative of  
01:20:16 14 child pornography?

01:20:18 15 A. Most of them. Youth, jail bait, private,  
01:20:22 16 daughter, PEDO.

01:20:37 17 Q. In the center here.

01:20:44 18 You mentioned LimeWire allows you to share that  
01:20:49 19 files with others?

01:20:50 20 A. Other users on the network.

01:20:52 21 Q. Other LimeWire users?

01:20:53 22 A. It could be other LimeWire users, FrostWire,  
01:20:57 23 Shareaza. LimeWire is a tool to get onto this world  
01:21:01 24 network.

01:21:01 25 Q. Do people pay to get onto the Gnutella network?

01:21:05 1 A. No.

01:21:06 2 Q. Is it limited to Ohio, midwest?

01:21:08 3 A. All over the world.

01:21:09 4 Q. And please, if you could read the sentence here  
01:21:12 5 that's in the middle of the screen.

01:21:14 6 A. "Files in this list are shared anonymously with  
01:21:17 7 the world."

01:21:17 8 Q. What does that mean?

01:21:19 9 A. It's letting you know that anything that is  
01:21:21 10 within this folder, when you are online on the network,  
01:21:25 11 other users can download from you.

01:21:40 12 Q. What do we have here?

01:21:43 13 A. This is the same folder, just again farther down  
01:21:46 14 into the file list.

01:21:47 15 Q. So there is public shared. It still has the same  
01:21:49 16 warning in the middle about anonymous sharing?

01:21:53 17 A. Yes.

01:21:58 18 Q. Here?

01:21:58 19 A. Same. Same file list farther down.

01:22:06 20 Q. And what sorts of images are these?

01:22:09 21 A. Those are JPEGs or EMPs without the file  
01:22:15 22 extension. I can't tell you from here, but they're  
01:22:17 23 still photos.

01:22:18 24 Q. Any words there indicative of child pornography?

01:22:21 25 A. Kiddie porn.

01:22:42 1 Q. What's this screen?

01:22:43 2 A. This is going to be the options menu from within  
01:22:47 3 the LimeWire software.

01:22:49 4 Q. What does the options menu tell you?

01:22:52 5 A. It allows you to make some changes to how the  
01:22:54 6 program works, what the program does, whether it loads  
01:22:59 7 at startup. And in this case it allows you to turn off  
01:23:06 8 downloaded files going into your public shared if you  
01:23:09 9 choose to do that.

01:23:18 10 Q. This is a blown up portion of the screen. It  
01:23:22 11 says "sharing." What does this indicate?

01:23:24 12 A. It's just telling you how to modify what you are  
01:23:28 13 sharing on the internet, where to find it, how to modify  
01:23:31 14 it.

01:23:34 15 Q. That last line, "Add files I download from P2P  
01:23:39 16 users to my public shared list," what does that mean?

01:23:42 17 A. What that's telling the software, when I'm  
01:23:45 18 downloading from the Gnutella network from another user,  
01:23:49 19 when the download completes, automatically put it into  
01:23:53 20 my shared folder.

01:23:55 21 Q. This is a checkmark by that line. What does that  
01:23:59 22 checkmark mean?

01:24:00 23 A. You can turn it off.

01:24:01 24 Q. In the case is it turned off or on?

01:24:04 25 A. No.

01:24:05 1 Q. Off or on?

01:24:06 2 A. It's on.

01:24:17 3 Q. One other set of slides, Detective Morford, if I  
01:24:17 4 may.

01:24:42 5 What is this screen?

01:24:43 6 A. This is actually the "about" screen off that  
01:24:45 7 LimeWire software that I was running in the Virtual Box  
01:24:48 8 just showing the software version is the reason I took a  
01:24:53 9 shot of it.

01:24:53 10 Q. What LimeWire version is it?

01:24:55 11 A. 5.3.6.

01:24:58 12 Q. And that is the software version that you have at  
01:25:02 13 TPD, or is that the software version that's on the  
01:25:05 14 laptop in front of you?

01:25:06 15 A. That is the software version that's on that  
01:25:09 16 laptop.

01:25:13 17 Q. What is this screen?

01:25:15 18 A. That is the contents of a CD that we made with  
01:25:20 19 the "install executable" for LimeWire 5.3.6.

01:25:24 20 Q. What is this item that's been highlighted here?

01:25:26 21 A. That's the install, the executable file to  
01:25:29 22 install that software.

01:25:30 23 Q. What do you mean "executable file"?

01:25:32 24 A. When you double click on that file, you run this  
01:25:35 25 program, which will start the install process to install

01:25:38 1 LimeWire on your computer.

01:25:53 2 Q. What's this screen?

01:25:55 3 A. This is the first notice that you get when you  
01:25:59 4 run that. It's asking you if you want to allow this  
01:26:02 5 piece of software to make changes to your operating  
01:26:05 6 system.

01:26:09 7 Q. This screen?

01:26:10 8 A. If you click "yes" you get the install beginning.  
01:26:14 9 This is telling you what you're installing to start  
01:26:17 10 going through the the install process.

01:26:22 11 Q. What's this screen?

01:26:23 12 A. File path, where the software is installed. The  
01:26:28 13 default file path where the software itself is  
01:26:31 14 installed.

01:26:35 15 Q. And what does this depict?

01:26:36 16 A. This is the progress bar showing the installation  
01:26:39 17 occurring. We installed this on a virtual machine of  
01:26:42 18 our own.

01:26:46 19 Q. And what does this indicate?

01:26:47 20 A. It's showing you the installation completed and  
01:26:52 21 you can run the software. Hit "finish" when that  
01:27:01 22 install is done.

01:27:02 23 THE COURT: How much longer?

01:27:04 24 MR. CRAWFORD: I would anticipate about 30  
01:27:06 25 minutes.

01:27:07 1 THE COURT: I have a brief conference, so it  
01:27:11 2 will take me about ten minutes probably.

01:27:14 3 MR. CRAWFORD: Right now, Judge?

01:27:15 4 THE COURT: Why don't we take our recess.

01:34:11 5 (Recess taken.)

01:46:13 6 THE COURT: You may resume.

01:46:17 7 You understand you remain under oath?

01:46:20 8 THE WITNESS: Yes, sir.

01:46:22 9 BY MR. CRAWFORD:

01:46:22 10 Q. Continuing with Exhibit 18, was LimeWire  
01:46:29 11 installed on the computer in front of you there?

01:46:32 12 A. Yes.

01:46:33 13 Q. And do you recall what version of LimeWire was  
01:46:37 14 installed?

01:46:38 15 A. 5.3.6.

01:46:40 16 Q. In the images I showed you, Exhibit 18 here,  
01:46:44 17 those are images that depict what?

01:46:47 18 A. This is the desktop of our virtual machine.

01:46:50 19 Q. And the previous slides that we looked at  
01:46:53 20 depicted?

01:46:54 21 A. LimeWire being installed on this machine.

01:46:57 22 Q. Are these the same sort of steps that someone  
01:47:00 23 installing LimeWire on that computer or any other  
01:47:03 24 computer would have to go through in order to install  
01:47:05 25 LimeWire?



01:47:06 1 A. Yes.

01:47:07 2 Q. So back to Exhibit 18 here. What is this image?

01:47:11 3 A. This is the desktop showing the shortcut to  
01:47:14 4 LimeWire.

01:47:14 5 Q. Is this the shortcut to LimeWire?

01:47:21 6 A. Yes.

01:47:22 7 Q. And is that the same shortcut as on Government's  
01:47:26 8 Exhibit 7 in front of you there?

01:47:27 9 A. Yes.

01:47:27 10 Q. And 5.3.6 indicates what?

01:47:31 11 A. The software version.

01:47:47 12 Q. And what is this screen?

01:47:50 13 A. This is LimeWire's legal terms of use and  
01:47:54 14 copyright information the first time you run the  
01:47:57 15 software.

01:48:00 16 Q. In order to get to this screen, what did you do  
01:48:04 17 in the virtual machine?

01:48:05 18 A. I would have double clicked the LimeWire 5.3.6  
01:48:10 19 icon.

01:48:10 20 Q. To get to their software, what do you have to do?

01:48:11 21 A. You have to agree to the terms of their use

01:48:17 22 A. I take it you agreed?

01:48:18 23 A. Correct.

01:48:19 24 Q. What is this screen?

01:48:20 25 A. Basic configurations settings. Do you want

01:48:23 1 LimeWire to launch in your system tray when you start  
01:48:26 2 your computer? Do you want to take part in an anonymous  
01:48:30 3 survey in order to make their product better?

01:48:32 4 Q. And what do those boxes with the Xs on the left  
01:48:36 5 indicate?

01:48:36 6 A. You can turn those options off.

01:48:39 7 Q. And since you're running this on a virtual  
01:48:43 8 machine, are these Xs that you put in there, or are  
01:48:45 9 these Xs that were automatically put in there?

01:48:48 10 A. Everything on this install including these Xs are  
01:48:52 11 default that come up when you run the software.

01:48:57 12 Q. In the very top left-hand corner there, what does  
01:49:04 13 that information indicate?

01:49:05 14 A. This is step 2 of the set up the first time you  
01:49:09 15 run LimeWire, and it's giving you some information about  
01:49:11 16 file sharing.

01:49:15 17 Q. And what does this screen say?

01:49:18 18 A. This allows you to turn off the option that adds  
01:49:24 19 files that you've downloaded from other users on the  
01:49:27 20 Gnutella network to your public share list.

01:49:35 21 Q. What does this indicate here?

01:49:36 22 A. It's turned on by default.

01:49:38 23 Q. What's turned on by default?

01:49:40 24 A. The adding the files to your public shared by  
01:49:44 25 default, that's where the file you download goes.

01:49:48 1 Q. Someone setting up LimeWire, would they have the  
01:49:52 2 option of un-"X"ing that box?

01:49:55 3 A. Yes.

01:49:58 4 Q. This public shared list, what files go into this  
01:50:04 5 public shared list that are shared with the world?

01:50:06 6 A. You can put files from there, from other places  
01:50:09 7 in your computer if you would like. By "there," any  
01:50:12 8 files that you download from the Gnutella network will  
01:50:15 9 automatically go there when the download completes.

01:50:18 10 Q. When we were reviewing Exhibit 15, which was  
01:50:21 11 Government's Exhibit 7 there in a virtual environment,  
01:50:25 12 were some of those screen shots of the public shared  
01:50:28 13 list?

01:50:29 14 A. Yes.

01:50:45 15 Q. Detective Morford, what is an FTK analysis?

01:50:48 16 A. FTK is the software we use to run the analysis  
01:50:52 17 on the image we created. It stands for Forensic  
01:50:56 18 Toolkit. It is a software developed by Access Data.  
01:50:59 19 It's an industry standard in law enforcement. It's used  
01:51:03 20 throughout the world for computer analysis, computer  
01:51:06 21 forensics.

01:51:07 22 Q. Generally what sorts of uses -- what can you do  
01:51:09 23 with it, would you do with it in your day-to-day job  
01:51:14 24 duties?

01:51:15 25 A. We use it everyday. FTK takes the contents of an

01:51:21 1 image or a hard drive directly, if that's what you  
01:51:26 2 choose to do. It examines the file system. It indexes  
01:51:30 3 all of the words on the computer; it categorizes all of  
01:51:35 4 the files within the computer as to what type of file it  
01:51:38 5 is; for example, a document or a graphic or multimedia.  
01:51:44 6 And it allows me to go look when I do my analysis at  
01:51:48 7 just the types of files I need without having to sift  
01:51:53 8 through 300,00 or 400,000 other system files that are  
01:51:56 9 not important.

01:51:57 10 Q. Did you perform or did you use the FTK software  
01:52:01 11 to analyze the image of Government's Exhibit 7 there?

01:52:04 12 A. Yes, I did.

01:52:16 13 Q. Let me show you Government's Exhibit 16. What is  
01:52:18 14 that item?

01:52:19 15 A. That is a copy of the FTK report that I generated  
01:52:23 16 at the conclusion of my exam.

01:52:24 17 Q. How do you know that's a copy?

01:52:25 18 A. I reviewed it, and it's my initials on the disk.

01:53:39 19 Q. Is this your FTK report?

01:53:43 20 A. Yes, it is.

01:53:45 21 Q. I'll show you an item on the left here called  
01:53:49 22 bookmarked files. What does this screen indicate?

01:53:58 23 A. I had this to the report -- or had the report  
01:54:00 24 generate this to show any file I added as an evidence  
01:54:04 25 file to my final case report to show the file path. So

01:54:08 1 somebody looking at this could see where on the computer  
01:54:11 2 that file would have resided if you were exploring the  
01:54:14 3 computer yourself. Everything in blue is an evidence  
01:54:19 4 item.

01:54:25 5 Q. Do you see that folder called documents?

01:54:27 6 A. Yes.

01:54:28 7 Q. What's there?

01:54:29 8 A. That is the documents folder we looked at earlier  
01:54:33 9 with the LimeWire folder and the LimeWire saved folder  
01:54:36 10 within it, and then the evidence that I added to the  
01:54:38 11 case within that.

01:54:43 12 Q. And what are the -- is the blue writing here  
01:54:47 13 underneath the LimeWire saved?

01:54:49 14 A. Those are the file names.

01:55:00 15 Q. And what is this screen?

01:55:02 16 A. This is the file properties for each file, all of  
01:55:06 17 the file properties I have available for each file that  
01:55:09 18 I added to the case as an evidence item to include the  
01:55:12 19 file path, the file name, what type of file it was, the  
01:55:17 20 logical physical size, created, modified, and accessed  
01:55:21 21 if it was available. If you scroll down, the hash  
01:55:27 22 values should be available as well and a link to the  
01:55:30 23 file.

01:55:38 24 Q. Here's one example you'll see file there. What's  
01:55:41 25 that file name?

01:55:42 1 A. Nine year old or 9YO Jennie nude with legs spread  
01:55:46 2 wide apart.

01:55:48 3 Q. Beneath that it says full path. What does full  
01:55:51 4 path indicate?

01:55:51 5 A. Full path is where the file was on the computer  
01:55:56 6 that it came from.

01:56:02 7 Q. Do you see extension JPG? What does that mean?

01:56:07 8 A. That means that it's a still photo.

01:56:13 9 Q. And what is this link here?

01:56:16 10 A. That's a link to the photo.

01:56:23 11 Q. And is this an image of the photo that goes with  
01:56:28 12 the other properties that you just described?

01:56:31 13 A. Yes.

01:57:12 14 Q. How about this file here. The same information?

01:57:14 15 A. The same information.

01:57:15 16 Q. You have a file name. And what's that file name  
01:57:19 17 there?

01:57:19 18 A. Kids teens women porno Lolitas preteens,  
01:57:26 19 hussyfans, underage.

01:57:30 20 Q. Are those terms associated with child  
01:57:32 21 pornography?

01:57:32 22 A. Most definitely.

01:57:34 23 Q. It says extension here, jpg. What does that  
01:57:37 24 indicate?

01:57:37 25 A. It's a photo.

01:57:41 1 Q. And this link here, exported as?

01:57:43 2 A. That will be the photo.

01:57:48 3 Q. And is that the photo that is associated with  
01:57:50 4 that file name?

01:57:51 5 A. Yes.

01:58:22 6 Q. Detective Morford, this is Government's Exhibit  
01:58:24 7 17. Do you recognize that item?

01:58:28 8 A. Yes, I do.

01:58:29 9 Q. What is that?

01:58:30 10 A. A slide show of the exploited images from my FTK  
01:58:36 11 report.

01:58:36 12 Q. And the images on that disk, where did they come  
01:58:39 13 from?

01:58:39 14 A. They came from my FTK report.

01:58:43 15 Q. Is that a summary of what's on your FTK report?

01:58:46 16 A. Yes.

01:58:47 17 Q. Have you had an opportunity to review the images  
01:58:49 18 on that disk?

01:58:50 19 A. Yes.

01:58:50 20 Q. Are the images on that disk the same that you  
01:58:53 21 found in your FTK analysis?

01:58:55 22 A. Yes, they are.

01:59:35 23 Q. What are we looking at here?

01:59:36 24 A. This is the contents of the CD you just put in on  
01:59:40 25 of the exported images as well as a Microsoft

01:59:43 1 PowerPoint.

01:59:44 2 Q. What is that Microsoft PowerPoint?

01:59:46 3 A. Untitled 1.

01:59:48 4 Q. And what does it contain?

01:59:49 5 A. That's going to be the slides above and below.

01:59:53 6 Q. And at the bottom here it says movie clip. What  
01:59:55 7 are those?

01:59:56 8 A. Three movies.

01:59:57 9 Q. And you've seen these, and they're images that  
02:00:01 10 came from your analysis of Government's Exhibit 7?

02:00:03 11 A. Yes, they did.

02:00:04 12 Q. I'll play the first movie and ask you to identify  
02:00:07 13 it.

02:00:28 14 MR. CRAWFORD: Your Honor, two or three  
02:00:29 15 movies we've seen before. I was going to play them for  
02:00:32 16 approximately ten seconds to give Detective Morford an  
02:00:36 17 opportunity to identify. The third one we have not  
02:00:38 18 seen; I was going to play it in its entirety.

02:00:41 19 I'll play therefore approximately ten  
02:00:44 20 seconds, Detective Morford, and you can acknowledge  
02:00:46 21 whether you recognize it.

02:00:48 22 (Video played in open court.)

02:00:57 23 Q. Detective Morford, is that one of the movies you  
02:01:00 24 discovered during your FTK analysis?

02:01:04 25 A. Yes.



02:01:07 1 (Video shown in open court.)

02:01:42 2 Q. The same question, is this one of the movies  
02:01:45 3 you've seen?

02:01:45 4 A. Yes.

02:01:59 5 (Video shown in open court.)

02:03:39 6 Q. Same question. Is that a video you uncovered  
02:03:42 7 during your FTK analysis?

02:03:44 8 A. Yes.

02:03:45 9 Q. These will be still images.

02:04:04 10 (Photographs shown in open court.)

02:05:47 11 Q. Are those images that you recovered during your  
02:05:51 12 FTK analysis?

02:05:52 13 A. Yes.

02:05:56 14 MR. CRAWFORD: Just a moment, Your Honor.

02:06:36 15 BY MR. CRAWFORD:

02:06:36 16 Q. Detective Morford, the last movie we saw, have  
02:06:40 17 you seen that in other investigations before?

02:06:42 18 A. Many times.

02:06:43 19 Q. And is that a full version of that video?

02:06:45 20 A. No.

02:06:47 21 Q. And what have you seen, the full version of that  
02:06:52 22 video, in other investigations?

02:06:54 23 A. The full version is much longer; it's called the  
02:06:57 24 Baby J video. There are multiple men having sex with  
02:07:00 25 that little girl. She's probably around five years old.

02:07:06 1 MR. CRAWFORD: Judge, if we could approach  
02:07:08 2 at the side for a second.

02:07:10 3 (Whereupon the following discussion was had  
02:08:11 4 at the bench outside the hearing of the jury:)

02:08:11 5 MR. CRAWFORD: Judge, that's our last  
02:08:11 6 witness. Do you want to do exhibits now?

02:08:11 7 THE COURT: She has cross. Wait for her to  
02:08:11 8 finish the cross-examination.

02:08:11 9 How long do you think cross will be?

02:08:11 10 MS. KELLEY: Very brief.

02:08:11 11 THE COURT: Are there going to be  
02:08:11 12 objections?

02:08:11 13 MS. KELLEY: Not that I can think of at this  
02:08:12 14 point.

02:08:21 15 (End of side-bar discussion.)

02:08:28 16 THE COURT: You may examine.

02:08:30 17 MS. KELLEY: Thank you, Your Honor.

02:08:30 18 - - -

02:08:30 19 DAVID MORFORD, CROSS-EXAMINATION

02:08:32 20 BY MS. KELLEY:

02:08:32 21 Q. Good afternoon. I'm Elizabeth Kelley. I  
02:08:34 22 represent Alex Cook.

02:08:37 23 Now, you examined a number of different items  
02:08:40 24 which were seized in Alex's apartment, didn't you?

02:08:44 25 A. That's correct.

02:08:45 1 Q. You examined a thumb drive?

02:08:48 2 A. Yes.

02:08:48 3 Q. And memory cards?

02:08:51 4 A. Correct.

02:08:51 5 Q. And an Xbox?

02:08:53 6 A. Right.

02:08:53 7 Q. And an iPod?

02:08:56 8 A. Yes.

02:08:57 9 Q. And you didn't find any evidence of child

02:09:01 10 pornography on any of those items, did you?

02:09:03 11 A. No, ma'am.

02:09:04 12 Q. Just found the hard drive?

02:09:05 13 A. Yes, ma'am.

02:09:06 14 Q. During the course of your examination, did you

02:09:10 15 discover when the LimeWire software was actually

02:09:14 16 downloaded on to the hard drive?

02:09:17 17 A. No.

02:09:17 18 Q. You didn't? How long did you spend examining

02:09:22 19 the hard drive?

02:09:24 20 A. Quite a while.

02:09:25 21 Q. And you never discovered when it was downloaded?

02:09:31 22 A. I didn't think it was relevant.

02:09:35 23 Q. Now, in your FTK report, in virtually every

02:09:46 24 single entry the created time, the modified time, and

02:09:50 25 the access time was identical. Why was that?

02:09:53 1 A. Because the machine was running Windows Vista,  
02:09:57 2 and Windows Vista by default does not update access  
02:10:00 3 dates when you access a file.

02:10:02 4 Q. All right. So there's really, based on that,  
02:10:05 5 there's no evidence that any of those files were  
02:10:09 6 actually opened, is there?

02:10:10 7 A. No.

02:10:11 8 Q. And there's no evidence that they were actually  
02:10:14 9 viewed, is there?

02:10:15 10 A. Nope.

02:10:16 11 Q. And there's no evidence that they were actually  
02:10:19 12 categorized, is there?

02:10:21 13 A. No.

02:10:24 14 Q. Now, there's something called a biometric device  
02:10:29 15 on Alex's computer, correct?

02:10:31 16 A. Correct.

02:10:32 17 Q. And tell the jury in a couple quick sentences  
02:10:36 18 what a biometric device is?

02:10:38 19 A. A fingerprint reader.

02:10:43 20 Q. And Alex could, once Alex was logged in, he  
02:10:48 21 didn't need to log in again in his computer, did he, on  
02:10:51 22 his computer, did he --

02:10:53 23 A. No.

02:10:54 24 Q. -- if it had a biometric device?

02:10:56 25 A. No.

02:10:57 1 Q. And until the computer was unplugged and  
02:11:00 2 disabled, that biometric device would still be in  
02:11:05 3 effect, wouldn't it?

02:11:09 4 A. It would depend on the settings on the machine.

02:11:12 5 Q. Okay. But, in other words, Alex could sign in  
02:11:15 6 once, and that would be it, correct?

02:11:17 7 A. It's possible, yes.

02:11:19 8 Q. So, in other words, someone else could sit down  
02:11:23 9 in front of Alex's keyboard, and it wouldn't know the  
02:11:26 10 difference, would it?

02:11:27 11 A. No.

02:11:32 12 Q. Now, do you, in fact, know that Alex was the  
02:11:38 13 person sitting in front of his keyboard every single  
02:11:40 14 time?

02:11:41 15 A. No.

02:11:43 16 Q. Now, since only the IP address of the router was  
02:11:52 17 the subject of the search warrant, could these files  
02:11:57 18 have come from any other computer on the network behind  
02:12:00 19 the router?

02:12:01 20 A. I guess you're going to have to explain your  
02:12:04 21 question. Are you talking about the undercover  
02:12:06 22 downloaded files?

02:12:07 23 Q. Yes.

02:12:09 24 A. They could have come from any computer on that  
02:12:11 25 network.

02:12:13 1 Q. Any computer on that network?

02:12:15 2 A. Behind that router.

02:12:18 3 Q. Did you examine any other computers from that  
02:12:24 4 particular apartment?

02:12:31 5 A. I don't believe so.

02:12:34 6 Q. Do you know how long Alex had this computer?

02:12:38 7 A. I have no idea.

02:12:45 8 Q. How old, if you remember, were some of the oldest  
02:12:50 9 files on that computer that weren't child pornography,  
02:12:54 10 if you remember?

02:12:54 11 A. I don't remember. I wouldn't even have paid  
02:12:57 12 attention to them.

02:12:58 13 Q. Now, are you familiar with the term MAC address?

02:13:06 14 A. Yes.

02:13:07 15 Q. Tell the jury again in a couple quick sentences  
02:13:10 16 what a MAC address is?

02:13:11 17 A. It's an access control, a MAC address is -- it's  
02:13:16 18 kind of like a serial number for a network device. A  
02:13:19 19 lot of places -- like, for instance, Buckeye Cable used  
02:13:22 20 a MAC address to authenticate a router. It's usually  
02:13:26 21 unique to that network device.

02:13:29 22 Q. What was the specific MAC address that the files  
02:13:32 23 were downloaded from?

02:13:33 24 A. I don't know.

02:14:04 25 Q. You had -- there was a category labeled "Public

02:14:09 1 Share," on the computer. Do you recall that?

02:14:14 2 A. Yes.

02:14:15 3 Q. Did files appear in that category automatically,  
02:14:22 4 or did they have to be posted there?

02:14:26 5 A. The Public Shared is populated automatically by  
02:14:30 6 files downloaded from LimeWire. But you can place files  
02:14:34 7 in there.

02:14:35 8 Q. And do you know who can place files there?

02:14:38 9 A. Anybody sitting behind the keyboard.

02:14:41 10 Q. Anyone in the world -- anyone in the network?

02:14:44 11 A. Not necessarily.

02:14:46 12 Q. Do you necessarily need to know the person  
02:14:49 13 posting?

02:14:50 14 A. Nobody on Gnutella can push a file up to your  
02:14:54 15 computer. Somebody in that local network could put  
02:14:58 16 something behind that router if it was shared and opened  
02:15:03 17 for them to do that.

02:15:04 18 Q. But you needn't necessarily know that person,  
02:15:06 19 would you?

02:15:09 20 A. If they're accessing your network, I would think  
02:15:11 21 you would know who's on your network.

02:15:14 22 MS. KELLEY: Could I have a moment, Your  
02:15:20 23 Honor?

02:15:20 24 (Discussion had off the record.)

02:15:21 25 MS. KELLEY: No more questions. Thank you.

02:15:28 1 - - -

02:15:28 2 DAVID MORFORD, REDIRECT EXAMINATION

02:15:29 3 BY MR. CRAWFORD:

02:15:29 4 Q. Detective Morford, you were asked about images

02:15:32 5 that were downloaded to Mr. Cook's computer from

02:15:35 6 LimeWire?

02:15:35 7 A. Yes.

02:15:36 8 Q. Are you a task force member with the Oklahoma

02:15:41 9 FBI?

02:15:41 10 A. No.

02:15:41 11 Q. Were you involved with that at all?

02:15:43 12 A. No.

02:15:43 13 Q. Were you asked to do any analysis on the files

02:15:46 14 that were downloaded from the Oklahoma FBI?

02:15:48 15 A. No.

02:15:51 16 MR. CRAWFORD: Thank you.

02:15:52 17 MS. KELLEY: Nothing further.

02:15:59 18 THE COURT: Any further witnesses from the

02:16:01 19 government?

02:16:01 20 MR. CRAWFORD: No, Your Honor.

02:16:03 21 THE COURT: Are you prepared to proceed for

02:16:05 22 a bit, or what's your pleasure?

02:16:07 23 MS. KELLEY: We can begin with our first

02:16:09 24 witness, Your Honor.

02:16:11 25 THE COURT: Why don't we do that.



02:16:16 1 MS. KELLEY: Could we approach, though.

02:18:49 2 (Whereupon the following discussion was had  
02:18:49 3 at the bench outside the hearing of the jury:)

02:18:49 4 THE COURT: What's your timetable? Can we  
02:18:49 5 get all the evidence to the jury by 3:00 or 4:00  
02:18:49 6 tomorrow, 3:30, 4:00?

02:18:49 7 MS. KELLEY: I've got six witnesses  
02:18:49 8 tomorrow.

02:18:49 9 THE COURT: Were you planning to carry over  
02:18:49 10 until Tuesday?

02:18:49 11 MR. SECOR: Tomorrow's Thursday.

02:18:49 12 MS. KELLEY: I think we, for purposes of the  
02:18:50 13 record, I need to make a Rule 29 motion.

02:18:50 14 THE COURT: Can we get all the evidence to  
02:18:50 15 the jury -- can we get the whole case to the jury by  
02:18:50 16 Friday afternoon?

02:18:50 17 MR. SECOR: I think we can get the whole  
02:18:50 18 case to the jury by tomorrow.

02:18:50 19 THE COURT: Can you get all your witnesses  
02:18:51 20 in by tomorrow?

02:18:51 21 MS. KELLEY: They have been told to be here.  
02:18:51 22 I don't know how quickly we'll plow through them.

02:18:51 23 THE COURT: What will that leave, rebuttal?

02:18:51 24 MR. SECOR: Very short rebuttal witnesses.

02:18:51 25 THE COURT: We can at least get the jury

02:18:51 1 charged on Friday?

02:18:51 2 MR. SECOR: Absolutely.

02:18:52 3 MS. KELLEY: I know you're unavailable on  
02:18:52 4 Friday -- or Monday, excuse me.

02:18:52 5 THE COURT: The jury can deliberate. I'm  
02:18:52 6 here.

02:18:52 7 MS. KELLEY: That's what I wondered.

02:18:52 8 MR. SECOR: Before we rest, we have to  
02:18:52 9 discuss these, the exhibits.

02:18:53 10 THE COURT: I'll say that -- why don't you  
02:18:53 11 say you rest subject to admission of exhibits. I'll  
02:18:53 12 adjourn, and we'll tidy up our business.

02:18:53 13 MR. SECOR: All right.

02:18:53 14 THE COURT: And is that what you're saying?

02:18:53 15 MR. SECOR: Normally we decide on admission  
02:18:53 16 of the exhibits before we rest.

02:18:53 17 THE COURT: You don't have any objection?

02:18:53 18 MS. KELLEY: No.

02:18:53 19 THE COURT: You can rest subject to  
02:18:53 20 admission. If there's some problem with the exhibit --

02:18:53 21 MR. SECOR: I don't see any.

02:18:53 22 (End of sidebar discussion.)

02:18:53 23 THE COURT: Does the government have any  
02:18:54 24 further witnesses?

02:18:55 25 MR. SECOR: We do not, Your Honor. Subject

02:18:59 1 to admission of exhibits, the government would rest.

02:19:02 2 THE COURT: Okay. Ladies and gentlemen, I  
02:19:04 3 think we'll adjourn for the day, earlier than I thought.  
02:19:08 4 Counsel are hopeful that we can actually get the entire  
02:19:13 5 case into your hands before you go home on Friday. I  
02:19:17 6 don't think it will be possible for you to start  
02:19:20 7 deliberations, although that will be entirely up to you.  
02:19:29 8 So it's more likely than not that we'll get the case to  
02:19:32 9 you, we'll complete everything by Friday afternoon, but  
02:19:38 10 you'll have to come back on Monday to deliberate. Let's  
02:19:41 11 see how it goes. But we're actually moving along at a  
02:19:45 12 better pace than I and counsel had anticipated. In any  
02:19:51 13 event, we'll adjourn for the evening. We'll start  
02:19:54 14 tomorrow at 8:30 with defense witnesses. Keep an open  
02:20:01 15 mind. We'll see you tomorrow morning.

02:20:48 16 (Jury exits the courtroom.)

02:23:12 17 THE COURT: You have Exhibits 1 through 17?

02:23:15 18 MR. SECOR: 1 through 20. 1 was the lead  
02:23:23 19 disk identified by Special Agent Whisman.

02:23:27 20 THE COURT: Any objection?

02:23:28 21 MS. KELLEY: No, Your Honor.

02:23:31 22 MR. SECOR: Two was the lead disk summary  
02:23:37 23 identified by Agent Whisman.

02:23:38 24 THE COURT: Any objection?

02:23:39 25 MS. KELLEY: None, Your Honor.

02:23:40 1 MR. SECOR: Three was the Time Warner  
02:23:42 2 subpoena identified by Special Agent Whisman.

02:23:45 3 MS. KELLEY: No.

02:23:47 4 MR. SECOR: Four was the Time Warner  
02:23:49 5 subpoena response identified by Special Agent Whisman  
02:23:53 6 and the Time Warner records custodian.

02:23:57 7 MS. KELLEY: No objection.

02:24:00 8 THE COURT: One through four will all be  
02:24:02 9 admitted.

02:24:03 10 MR. SECOR: Five was the, quote-unquote,  
02:24:05 11 Jennie image identified by Amy Allen.

02:24:09 12 MS. KELLEY: No, no objection.

02:24:11 13 THE COURT: It will be admitted.

02:24:12 14 MR. SECOR: Exhibit 6 was the quote-unquote  
02:24:14 15 Vicki video identified by Roy Shepherd.

02:24:19 16 MS. KELLEY: No objection.

02:24:20 17 THE COURT: Admitted.

02:24:23 18 MR. SECOR: Number 7 was the laptop computer  
02:24:26 19 identified by Special Agents Schulte, Smith, Russ, Jones  
02:24:32 20 and TPD Officer Morford.

02:24:39 21 MS. KELLEY: No objection.

02:24:40 22 THE COURT: It will be admitted.

02:24:41 23 MR. SECOR: Eight is the Miranda waiver  
02:24:43 24 identified by Special Agents Pape and Schulte.

02:24:47 25 MS. KELLEY: No objection.

02:24:51 1 MR. SECOR: Number 9 is the signed statement  
02:24:53 2 identified by Special Agent Pape.

02:24:58 3 MS. KELLEY: No objection.

02:24:59 4 THE COURT: They will be admitted.

02:25:02 5 MR. SECOR: Number 10 was the search warrant  
02:25:04 6 photo identified by Special Agent Jones.

02:25:10 7 MS. KELLEY: That was the photo of the  
02:25:11 8 bedroom? No objection.

02:25:13 9 THE COURT: It will be admitted.

02:25:15 10 MR. SECOR: Exhibit 11 was the cable bill  
02:25:19 11 identified by Special Agent Jones.

02:25:23 12 MS. KELLEY: No objection.

02:25:24 13 THE COURT: It will be admitted.

02:25:26 14 MR. SECOR: 12 was the resumé identified by  
02:25:31 15 Special Agent Jones.

02:25:32 16 MS. KELLEY: Objection as to relevance.

02:25:37 17 THE COURT: I think not. I think it's  
02:25:39 18 relevant. Objection noted and overruled. It shows a  
02:25:43 19 degree of educational obtainment. Whether it was  
02:25:47 20 prepared by him or someone else, it was in his  
02:25:50 21 possession, which would indicate constructive adoption.

02:25:57 22 MR. SECOR: Exhibit number 13.

02:26:01 23 THE COURT: If there's some reason to change  
02:26:06 24 that ruling during the defense case, renew your request.

02:26:10 25 It will be admitted.

02:26:12 1 MR. SECOR: Exhibit 13, consent to search  
02:26:15 2 the truck identified by Special Agents Schulte and Pape.  
02:26:20 3 MS. KELLEY: No objection.  
02:26:21 4 THE COURT: It will be admitted.  
02:26:23 5 MR. SECOR: Four, consent to search the  
02:26:24 6 apartment identified by Special Agents Schulte and Russ.  
02:26:29 7 MS. KELLEY: No objection.  
02:26:30 8 THE COURT: It will be admitted.  
02:26:35 9 MR. SECOR: Exhibit 15 was the laptop  
02:26:37 10 computer screen shots that was identified by TPD officer  
02:26:43 11 Morford.  
02:26:44 12 MS. KELLEY: No objection.  
02:26:45 13 THE COURT: It will be admitted.  
02:26:46 14 MR. SECOR: Exhibit 16 was the FTK report  
02:26:49 15 disk, again identified by TPD Agent Morford.  
02:26:54 16 MS. KELLEY: No objection.  
02:26:55 17 THE COURT: It will be admitted.  
02:26:57 18 MR. SECOR: Exhibit 17 was the FTK report  
02:26:59 19 summary disk again identified by TPD Officer Morford.  
02:27:06 20 MS. KELLEY: No objection.  
02:27:07 21 THE COURT: It will be admitted.  
02:27:08 22 MR. SECOR: Exhibit 18, LimeWire install  
02:27:11 23 screen shots, those were identified by TPD Officer  
02:27:16 24 Morford.  
02:27:16 25 MS. KELLEY: No objection.

02:27:18 1 THE COURT: It will be admitted.

02:27:19 2 MR. SECOR: 19 was not offered. And 20 is  
02:27:23 3 the evidence log, which was identified and testified to  
02:27:26 4 by Special Agent Russ.

02:27:28 5 MS. KELLEY: No objection.

02:27:29 6 THE COURT: It will be admitted.

02:27:31 7 Okay. Government rests?

02:27:33 8 MR. SECOR: We do.

02:27:34 9 MS. KELLEY: Thank you, Your Honor. We  
02:27:36 10 would like to make a Rule 29 motion for acquittal at  
02:27:39 11 this point. The government has not put forth sufficient  
02:27:44 12 evidence at this point to prove that it was Alex Cook  
02:27:48 13 who put these objects on his computer. They have not  
02:27:52 14 proved that even if the objects were on his computer he  
02:27:57 15 knowingly put them on his computer. Beyond that, they  
02:28:02 16 have not put forward sufficient evidence to show that  
02:28:05 17 the alleged confession was knowing, intelligent, and  
02:28:09 18 voluntary.

02:28:14 19 MR. SECOR: Briefly, Your Honor, as the  
02:28:15 20 Court, I'm sure, is well aware, at this stage of the  
02:28:17 21 proceeding the Court looks at the evidence in the light  
02:28:19 22 most favorable to the government. As far as the  
02:28:22 23 voluntariness of the confession or the statement, the  
02:28:27 24 Court heard, the jury heard all sorts of testimony  
02:28:30 25 relative to the defendant's demeanor, to his

02:28:33 1 willingness, to his intelligence, to his soberness, all  
02:28:39 2 of the indicia regarding the voluntariness of the  
02:28:44 3 confession.

02:28:45 4 As far as the knowledge is concerned, that  
02:28:47 5 can be imputed from the nature of the items seized on  
02:28:51 6 the computer, and the nature of the files, and the  
02:28:57 7 number of files, the period of time over which they had  
02:29:01 8 been accumulated, which can be all viewed on Exhibits 14  
02:29:08 9 through 18.

02:29:13 10 I have nothing further.

02:29:14 11 THE COURT: I'm going to overrule the  
02:29:16 12 motion. I think that there's sufficient evidence for  
02:29:18 13 the case to go to the jury and for a rational jury to  
02:29:23 14 decide on the basis of what's before it now that the  
02:29:27 15 defendant's guilty beyond a reasonable doubt. It's not  
02:29:30 16 to say that it will, but that's not the standard at this  
02:29:33 17 point.

02:29:34 18 Anything further from the government?

02:29:36 19 MR. SECOR: No, Your Honor.

02:29:36 20 THE COURT: Ms. Kelley?

02:29:37 21 MS. KELLEY: Nothing further.

02:29:40 22 THE COURT: We'll see you in the morning.

23 (Adjourned at 4:08 p.m.)

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**C E R T I F I C A T E**

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled  
matter.

/s Tracy L. Spore\_\_\_\_\_

Tracy L. Spore, RMR, CRR

\_\_\_\_\_ Date

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